

UNITED STATES BANKRUPTCY COURT

DISTRICT OF PUERTO RICO

In Re:) Docket No. 3:17-BK-3283 (LTS)
)
) PROMESA Title III
The Financial Oversight and)
Management Board for)
Puerto Rico,) (Jointly Administered)
)
as representative of)
)
The Commonwealth of)
Puerto Rico, *et al.*,) January 17, 2019
)
Debtors.)

In Re:) Docket No. 3:17-BK-3284 (LTS)
)
) PROMESA Title III
The Financial Oversight and)
Management Board for)
Puerto Rico,)
)
as representative of)
)
Puerto Rico Sales Tax)
Financing Corporation,)
(COFINA))
)
Debtor.)

The Bank of New York) Docket No. 3:17-AP-133 (LTS)
Mellon,)
) *in 17-BK-3284 (LTS)*
Plaintiff,)
v.)
)
Puerto Rico Sales Tax)
Financing Corporation,)
(COFINA), *et al.*,)
)
Defendants.)

1
2
3 The Official Committee of) Docket No. 3:17-AP-257 (LTS)
4 Unsecured Creditors of the)
5 Commonwealth of Puerto) *in 17-BK-3284 (LTS)*
6 Rico,)
7)
8 *as agent of*)
9)
10 The Financial Oversight and)
11 Management Board for)
12 Puerto Rico,)
13)
14 *as representative of*)
15)
16 The Commonwealth of)
17 Puerto Rico,)
18)
19 Plaintiff,)
20 v.)
21)
22 Bettina Whyte,)
23)
24 *as agent of*)
25)
The Financial Oversight and)
Management Board for)
Puerto Rico,)
Defendant.)

17
18 MOTION HEARING
19 BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN
20 UNITED STATES DISTRICT COURT JUDGE
21

22 APPEARANCES:

23 For The Commonwealth
24 of Puerto Rico, et al.: Mr. Martin Bienenstock, PHV
25 Mr. Brian Rosen, PHV
Mr. Michael Firestein, PHV
Mr. Hermann Bauer, Esq.

1	APPEARANCES, Continued:	
2	For the U.S. Trustee	
	Region 21:	Ms. Monsita Lecaroz Arribas, AUST
3	For Official Committee	
4	of Unsecured Creditors:	Mr. Luc Despins, PHV
5	For Puerto Rico Fiscal	
6	Agency and Financial	
	Advisory Authority:	Mr. John J. Rapisardi, PHV
7		Mr. Peter Friedman, PHV
		Ms. Suzzanne Uhland, PHV
8	For Ad Hoc Group of	
9	General Obligation	
	Bondholders:	Mr. Mark T. Stancil, PHV
10		
11	For PROSOL-UTIER:	Mr. Rolando Emmanuelli Jimenez, Esq.
12	For UAW and SEIU:	Mr. Peter D. DeChiara, PHV
13	For Ambac Assurance	
	Corporation:	Mr. Dennis Dunne, PHV
14	For GMS Group:	Mr. Gary Eisenberg, PHV
15	For COFINA Senior	
16	Bondholders'	
	Coalition:	Mr. Susheel Kirpalani, PHV
17		Mr. Daniel Salinas, PHV
		Mr. Eric Kay, PHV
18	For Peter Hein:	Mr. Peter C. Hein, Pro Se
19	For Mark Elliott:	Mr. Mark Elliott, Pro Se
20	For Lawrence Dvores:	Mr. Lawrence B. Dvores, Pro Se
21	For COFINA Agent:	Mr. Antonio Yanez, Jr. PHV
22	For Whitebox	
23	Multi-Strategy	
	Partners:	Mr. Andrew K. Glenn, PHV
24	For National Public	
25	Finance Guarantee:	Ms. Marcia Goldstein

1 APPEARANCES, Continued:

2 For Assured Guaranty: Mr. Mark C. Ellenberg, PHV

3 For COFINA Agent: Mr. Matthew A. Feldman, PHV

4 For Bank of New York
Mellon:

Mr. Eric A. Schaffer, PHV

5 Mr. Louis M. Solomon, PHV

6 For Credit Unions: Mr. Wigberto Lugo Mender, Esq.

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24 Proceedings recorded by stenography. Transcript produced by
CAT.

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I N D E X

WITNESSES:

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The Declaration of Daniel Goldberg
submitted into evidence.

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The Declaration of Robert Fishman
submitted into evidence.

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EXHIBITS:

Exhibits A, B, C and D at document 4767
Exhibits 4767-2, 3, 4, 5, 6, 7, 8 and 9

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San Juan, Puerto Rico

January 17, 2019

At or about 9:37 AM

* * *

THE COURT: Again, buenos dias. Good morning.

Welcome to counsel, parties in interest, members of the public and the press here in San Juan, those observing here and in New York and the telephonic participants.

The rules prohibiting the use of electronic communication devices in the courtrooms still apply, and I thank you all for continuing to comply with those rules of the Court and the Judicial Conference.

We're here for the continuation of the first stage of the hearing on the Motion for Confirmation of the Proposed Plan of Adjustment for COFINA. And before we go on to the statements of the objecting parties, the parties who have filed formal objections with the Court, I would like to raise, for the proponents of the motion, some specific questions that I have based on my review of the proposed findings of fact and conclusions of law, so that perhaps those can be addressed, at least in the first instance, in connection with the remarks here in court today.

Specifically, several of the paragraphs of the proposed findings and conclusions and the Proposed Confirmation Order contemplate that the Court will make

1 preclusive findings and rulings as to legal issues involving
2 the status of the new entity and instruments under
3 nonbankruptcy law, including the validity of the new bond
4 legislation and the status of the COFINA revenues under the
5 Puerto Rican Constitution.

6 In particular, these issues are raised by paragraphs
7 119, 124, and 170 of the findings of fact and conclusions of
8 law, and paragraph 1(B) of the Confirmation Order. Those are
9 the principal provisions that stuck out for me. There may be
10 some others.

11 I am assuming that the intention is that the legal
12 authority for requesting the determinations is Section 944(b)
13 of the Bankruptcy Code, which requires a determination of the
14 validity of new securities and provisions for payment and
15 securing payment. But what I do not see in the briefs or
16 submissions, as I went back and re-reviewed them, is a
17 specific iteration of the factual basis in the record for the
18 findings and conclusions. And specifically, no concise legal
19 presentation of reasoning and authority demonstrating the
20 substantive legal basis for those aspects for the proposed
21 findings and Order.

22 There have been thousands of pages of submissions and
23 many briefs, and it's possible that I missed it. But we did
24 search the record insofar as we could last night and did not
25 see that. And since, of course, many of these issues go to

1 ones that have been raised in litigation and that we all
2 recognize are complex and unsettled, I need more than
3 something -- than the desire for it to be able to consider
4 giving it. So that is the first issue.

5 The second issue goes to the supremacy related
6 paragraphs of the proposed findings and the proposed Order.
7 So that's paragraph 190 of the proposed findings and paragraph
8 53 of the proposed Order, which state that not only the Order
9 and the Plan, but that unspecified related documents,
10 including subsequent modifications and amendments, shall apply
11 and be enforceable, notwithstanding any otherwise applicable
12 nonbankruptcy law.

13 So I need to know what the related documents are to
14 which this refers; what the legal basis is for the contention
15 that the Court has authority to find and Order that such
16 private documents can override any nonbankruptcy law; why it
17 is that authority should continue, even with respect to post
18 confirmation modifications and amendments to such documents
19 when you don't even appear to require a Court approval of
20 modifications and amendments.

21 And again, I need to know, to be pointed to the
22 aspects of the submissions in support that demonstrate that
23 there's substantive federal law that would render such
24 ancillary documents enforceable as a matter of supreme federal
25 law in the way that the proposed Order contemplates. And

1 thank you for your attention to that.

2 So now we are ready to receive the statements of the
3 objectors, unless there's something else that counsel want to
4 raise before we go to the objector statements?

5 All right. And I've been given a schedule of the
6 agreed allocations, and I appreciate that.

7 And so first, Mr. DeChiara for SEIU and the UAW. And
8 I gather you've requested one minute, so it will be a brief
9 statement?

10 MR. DECHIARA: It will be brief.

11 Good morning, Your Honor. Peter DeChiara from the
12 law firm of Cohen Weiss & Simon, LLP, for the Service
13 Employees International Union and the United Auto Workers
14 Union.

15 The COFINA Plan of Adjustment is expressly
16 conditioned on the approval of the settlement of the
17 Commonwealth-COFINA dispute. Yesterday, in our opposition to
18 the Oversight Board's 9019 motion, we explained why that
19 unaffordable settlement should be rejected.

20 If the Court rejects the Settlement Agreement, as it
21 should for all the reasons we've explained yesterday and we've
22 explained in our brief, the Plan must necessarily fail as
23 well. Thank you.

24 THE COURT: Thank you.

25 And now Mr. Emmanuelli Jimenez for PROSOL-UTIER.

1 Good morning.

2 MR. EMMANUELLI JIMENEZ: Good morning, Your Honor.

3 MR. EISENBERG: Your Honor, just in the calendar, if
4 the Court has a calendar --

5 THE COURT: I'm sorry. Will you please come to the
6 microphone?

7 MR. ROSEN: I have one.

8 THE COURT: So there's a revised order of speakers?

9 MR. ROSEN: No. No. It's the same one.

10 MR. EISENBERG: Your Honor, I need to address -- Gary
11 Eisenberg, Perkins Coie, on behalf of GMS Group.

12 Yesterday afternoon I had a discussion with Mr. Rosen
13 about the issue of the allotted time. Mr. Hein was not here
14 in the courtroom when Mr. Rosen and I spoke. After I went
15 back from the courtroom, I spoke to Mr. Hein, and he wanted to
16 address the Court on the allocation of timing. And so I
17 wanted to make it clear to the Court that Mr. Hein had not
18 agreed on the particular timing in the allocation.

19 And I'd also sent an e-mail to Mr. Rosen and
20 Mr. Kirpalani last night indicating that Mr. Hein had not
21 agreed, and as a result, we didn't have an agreement on the
22 allocation of time. So I think that issue has to be addressed
23 before the Court proceeds on the assumption that there
24 actually has been an agreement on the time allocation.

25 The Court can make a determination on it, but I don't

1 want it to be unaddressed here on the record that there was
2 not an agreement on the time allocation.

3 And as the Court may recall, yesterday I had
4 indicated that if there were going to be objections lodged
5 from parties who were opposing the COFINA-Commonwealth
6 settlement, from the perspective of being creditors of the
7 Commonwealth, that we had opposition to them eating into our
8 objection time because we had different perspectives. And I
9 think the Court indicated that there should be ample time to
10 address the various positions of the parties.

11 So I think this has to be dealt with at the outset,
12 and I think Mr. Hein can probably address in particular the
13 substance of it. So I think it's appropriate for him to be
14 heard on the time allocation.

15 THE COURT: Well, just one moment. We're having some
16 problems with audio in New York, so we all need to be quiet
17 for a minute until -- so Mr. Emmanuelli Jimenez, would you go
18 back to your seat? Because I think we need to process this
19 first.

20 MR. EISENBERG: Should I do the same, Your Honor, or
21 should I stay here?

22 THE COURT: Why don't you stay here. And we'll feel
23 hopeful, but perhaps you can have a side conversation with
24 Mr. Rosen.

25 MR. ROSEN: Your Honor, I apologize. I did not get

1 an e-mail last night. It didn't go through to me anywhere. I
2 did not know about this.

3 THE COURT: All right. Let's stop talking to each
4 other until this gets fixed.

5 Thank you. All right. And I see someone from the AV
6 Department in New York has just come into that courtroom.

7 Ms. Ng, in the New York courtroom, may we proceed?

8 Lisa, can you speak into a microphone?

9 MS. Ng: Yes, Your Honor. You can proceed. Yes. We
10 can hear you now.

11 THE COURT: Thanks very much.

12 All right, then.

13 MR. ROSEN: Your Honor, Mr. Eisenberg informs me
14 rather than the 33 minutes the parties agreed to, rather, they
15 would like an hour and five minutes for those three people.

16 Mr. Hein would like 30 minutes himself; Mr. Elliott, 15
17 minutes; and Mr. Eisenberg would like 20 minutes.

18 Your Honor, we leave it to you to make the decision
19 as to what is appropriate.

20 THE COURT: Well, the allocation on the prior version
21 of the Agenda was 30 minutes for objectors all together. This
22 now proposes 50 minutes for objectors all together. And I had
23 undertaken yesterday, that permitting the other parties to
24 speak would not cut into the overall time allocation. I did
25 not hear yesterday and did not anticipate requests for over an

1 hour to speak.

2 I will increase the total allocation for the four
3 related objectors to 45 minutes, and you can decide among
4 yourselves how to split that up.

5 MR. EISENBERG: Thank you, Your Honor. We appreciate
6 the Court's decision.

7 MR. ROSEN: Thank you, Your Honor.

8 THE COURT: Thank you.

9 All right. Mr. Emmanuelli Jimenez.

10 MR. EMMANUELLI JIMENEZ: Good morning.

11 THE COURT: Good morning.

12 MR. EMMANUELLI JIMENEZ: For the record, Rolando
13 Emmanuelli Jimenez on behalf of PROSOL-UTIER. May it please
14 the Court.

15 THE COURT: Yes. Good morning.

16 MR. EMMANUELLI JIMENEZ: First of all, we want the
17 record to show that we respectfully disagree with the Court's
18 ruling of yesterday's hearing regarding PROSOL-UTIER's
19 standing in this proceeding. And we reserve our rights
20 regarding the admissibility of Dr. Almeida's report according
21 to Rule 103 of the Federal Rules of Evidence. Dr. Almeida's
22 report is at ECF number 4787.

23 For this argument, we adopt by reference our
24 arguments in motioning our position to the COFINA Settlement,
25 that is in 4251. Given the ruling regarding standing of

1 PROSOL-UTIER, our legal arguments will focus now on the
2 required burden of proof for confirmation.

3 The Oversight Board has the burden of proof to
4 establish that the Plan of Adjustment is confirmable under
5 Section 314 of PROMESA. However, the Oversight Board
6 submitted witnesses whose testimony is without substance,
7 thus, insufficient to satisfy the burden of proof.

8 Without an expert testimony to validate the
9 conclusion of the COFINA Fiscal Plan and the COFINA Plan of
10 Adjustment, it is impossible for this Court to evaluate the
11 applicable criteria for confirmation and compliance with
12 PROMESA, particularly with Sections 201 and 314.

13 None of the declarants in support of the Plan were
14 proffered as expert witnesses. They were presented as lay
15 witnesses. You can see on page four of the opposition of the
16 Oversight Board to our Motion in Limine. That is docket 4819.
17 The declarants' opinions are based on just their plain belief,
18 not applying any scientific principles that produce reliable
19 results.

20 Moreover, the qualifications stated in the
21 Declaration do not establish the relevant competencies to
22 testify regarding the reliability and feasibility of the
23 economic projections of the COFINA Plan of Adjustment. For
24 example, none of them are economists.

25 Moreover, none of the declarants did any calculation,

1 scientific evaluation or applied economic models to
2 demonstrate the feasibility of the Plan of Adjustment, nor
3 establish the economic and financial foundation of their
4 opinions. Therefore, their opinions are baseless and without
5 any probative value.

6 Their opinions are based on the words of out-of-court
7 communications of others that are not witnesses in these
8 proceedings. Therefore, it is forbidden hearsay.

9 Additionally, there is no evidence about who
10 performed the projections used to conclude that the COFINA
11 Plan of Adjustment complies with PROMESA and is it feasible.
12 The assertions in the COFINA Fiscal Plan and the Plan of
13 Adjustment are anonymous and without the required oath to be
14 considered admissible as evidence. They are just plain
15 hearsay.

16 The declarants, particularly Ms. Jaresko, appeared to
17 believe everything she was told by the legal advisors and the
18 Oversight Board without any evidence of independent
19 verification or corroboration. For instance, many of the
20 explanations of purported compliance with Section 314(b) of
21 PROMESA are just recitations of summarized portions of
22 COFINA's Plan of Adjustment.

23 It is particularly important that Ms. Jaresko's
24 opinions of the supposed compliance of the COFINA Plan of
25 Adjustment with Section 314(b) of PROMESA are based upon

1 information provided by the fund, by the fund attorneys which
2 are not witnesses in these proceedings.

3 Ms. Jaresko's Declaration states many conclusions
4 regarding compliance with PROMESA and the applicable sections
5 of the Bankruptcy Code. However, she is not a legal advisor,
6 nor is this type of testimony relevant and admissible to the
7 questions at hand. This Honorable Court does not need
8 testimony about the application of the law.

9 Furthermore, none of the witnesses addressed the
10 feasibility requirements stated in Section 314(b)(6) of
11 PROMESA, much less the consistency of the COFINA Plan of
12 Adjustment with the COFINA Fiscal Plan as required by Section
13 314(b)(7) of PROMESA.

14 Therefore, the declarations are not satisfactory, nor
15 sufficient to sustain a finding that the COFINA Plan of
16 Adjustment complies with the provisions of PROMESA. Thus, the
17 request for confirmation of the COFINA Plan of Adjustment
18 should be denied.

19 Thank you.

20 THE COURT: Thank you.

21 And so the representative of the Natal Group of
22 objectors?

23 I'm sorry. Before we hear the next speaker, I
24 understand that when we were having the sound issues,
25 Mr. Dvores and Mr. Hein both wanted to speak from New York on

1 the time allocation issue. I see that Mr. Hein is at the
2 podium now in New York.

3 Mr. Hein.

4 MR. HEIN: Yes. Thank you, Your Honor.

5 I had requested an opportunity to respond to the
6 legal arguments that Plan proponents presented in their briefs
7 of January 9. I did that in a filing with Your Honor. Your
8 Honor denied my request to respond in writing but said I could
9 present argument.

10 And I would like to address the legal issues, which
11 the proponent's position on the legal issues I raised in my
12 objections was first presented on January 9th. I have not had
13 an opportunity to respond in writing to that. It will take me
14 30 minutes to do that.

15 Respectfully, even with the other objectors, I think
16 we're talking about a total time, for the people that have
17 filed objections, significantly less than the amount that's
18 been allocated for public participants who have not submitted
19 formal objections.

20 It's billions of dollars at stake here. And
21 respectfully, we're, I believe, running ahead of the schedule.
22 And respectfully, I request the opportunity to argue the legal
23 points that we have not yet had an opportunity to respond to.

24 The COURT: So what I had ruled was that your group
25 could have 45 minutes all together. And so I'm assuming now

1 that the other members of your group do not believe that in
2 the remaining 15 minutes of that 45, they can make the
3 arguments that they need to make, summing the arguments
4 already submitted in the papers?

5 MR. EISENBERG: That would be correct, Your Honor. I
6 would need about 20 minutes to handle mine, and I think
7 Mr. Elliott would need about ten to handle his.

8 Should I repeat that with the microphone?

9 THE COURT: Yes, please.

10 That's Mr. Eisenberg speaking.

11 MR. EISENBERG: Your Honor, as I indicated, I think
12 that on behalf of GMS, I would need about 20 minutes, and I
13 think Mr. Elliott would need about ten for his arguments.

14 MR. ELLIOTT: Yes, Your Honor. I had requested 15
15 minutes. I'd like to try to accommodate the Court's wishes
16 and cut mine down as much as possible, but ten to 15 minutes I
17 think is reasonable, Your Honor.

18 THE COURT: All right. I will provide a total of an
19 hour, so that's 30 plus -- 30 for Mr. Hein and 30 to be
20 divided between Mr. Eisenberg and Mr. Elliott.

21 MR. HEIN: Your Honor, I think Mr. Dvores who is here
22 as well had wanted to speak as well. He filed an objection.
23 Thank you.

24 THE COURT: And so what is Mr. -- oh, thank you. So
25 Mr. Dvores is coming to the podium.

1 MR. DVORES: Your Honor, thank you for the
2 opportunity.

3 THE COURT: Good morning.

4 MR. DVORES: I wanted to just address one point. You
5 mentioned that we are a group. We actually filed these
6 objections independently of one another.

7 We do have things in common, issues in common. My
8 particular issue, which I raised at the November 20 hearing on
9 the issue of disclosure, is still a very much alive issue,
10 because now we have information that the tax question, what is
11 going to be the tax consequence of these new bonds, the issue
12 has been submitted, I believe, to the IRS for their review and
13 their ruling, whether or not the new bonds that would be
14 exchanged for the old COFINA bonds would be, in fact, tax
15 free.

16 That information, that issue, has not yet been
17 disclosed. That's quite an important issue. I wasn't
18 planning to address just that issue. I wanted to address some
19 others, but certainly we need more time than just five minutes
20 or ten minutes to take care of these issues, which as Mr. Hein
21 mentioned, involve millions of dollars, involve serious
22 constitutional questions.

23 And until now, until we've had this opportunity to
24 come here and object, we, the junior COFINA bondholders, have
25 not had an opportunity to participate in these negotiations

1 which resulted in this settlement.

2 So we are asking for something quite reasonable. I'm
3 asking for some additional time. I myself am willing to yield
4 to Mr. Hein, because he understands this so much better than I
5 do, but I would like at least five minutes.

6 THE COURT: Five minutes for Mr. Dvores. Thank you.

7 All right. So now the schedule that I've been given
8 allocates five minutes to the group that includes Mr. Natal.
9 Who is going to speak for that group?

10 That's the Vamos, Pinto Lugo, Natal Group objection.
11 All right. Well, let's go on to the representative of the --

12 I'm sorry. Someone is speaking.

13 MR. NATAL ALBELO: May I approach?

14 THE COURT: Yes. Good morning.

15 MR. NATAL ALBELO: Good morning, Your Honor. My name
16 is Manuel Natal. I am here because I am one of the 24 people
17 of Puerto Rico that would deliver testimony. I was not told
18 that we were allocated any sort of time in regard to the claim
19 that we presented and that -- it was removed from the Puerto
20 Rico judicial system. Is that what you're referring to, Your
21 Honor?

22 THE COURT: Well, I had anticipated calling you as
23 part of the public comment period, as you had been notified by
24 e-mail. Counsel this morning gave me a schedule of objector
25 statements that included a provision for a statement by a

1 representative of your group.

2 Mr. Rosen, would you come to the microphone, along
3 with Mr. Natal, and explain the structure?

4 MR. ROSEN: Yes, Your Honor. We did not know who was
5 on the list for the public comment. Because Mr. Natal had
6 filed an objection, we wanted to give him the opportunity to
7 speak as part of the objectors' statements. So to us, it
8 doesn't matter whether it's now or during the public comment
9 phase, though, Your Honor.

10 THE COURT: Well, Mr. Natal has filed an objector
11 statement and he had also applied to speak. And it wasn't
12 clear in his application to speak that he was the same person.
13 Nonetheless, he was chosen as one of the randomly chosen
14 people.

15 So Mr. Natal may have five minutes now, and then
16 we'll also call you in connection with the public comment.

17 MR. NATAL ALBELO: Perfect. Thank you, Your Honor.

18 THE COURT: So you can speak now for five minutes on
19 the objection filed. And then if you have anything further to
20 say, I'll give you another five minutes when I call up the
21 public speakers.

22 MR. NATAL ALBELO: That's great, Your Honor. Thank
23 you.

24 My name is Manuel Natal Albelo. I am a
25 representative at large here in Puerto Rico. And given the

1 way the process in which the Adjustment Plan was -- or the
2 bill that created -- that gave way to the Adjustment Plan was
3 passed through the legislature in Puerto Rico, we decided to
4 file a claim in Puerto Rico's courts questioning the
5 constitutionality of that process, as well as COFINA.

6 In that time, last Tuesday, we received notice of
7 removal from the Fiscal Control Board in the case that was
8 pending in Puerto Rico's court. And in that notice of
9 removal, the Fiscal Control Board confirms what we have in
10 some ways or shapes argued in our claim in front of the courts
11 of Puerto Rico.

12 What we're saying is that the process in which the
13 legislative assembly in Puerto Rico passed the bill that gives
14 way to this agreement was not a process according -- and was
15 not done accordingly to our Constitution, to our laws, and to
16 the internal process established in Puerto Rico's House of
17 Representatives.

18 The Fiscal Control Board, in its notice of removal,
19 confirms that the approval of that legislation is a condition
20 precedent to what's going on right now and to the
21 consideration of the Adjustment Plan that you have in front of
22 you.

23 What we're arguing in that claim is that this process
24 cannot move forward until that controversy is taken care of,
25 until we are able to present to the courts of Puerto Rico our

1 arguments on how that legislation was passed in Puerto Rico's
2 House of Representatives, and how it violated the
3 Constitution, the laws, and particularly the internal process
4 of Puerto Rico's House of Representatives.

5 THE COURT: Mr. Natal, I am informed that a lawyer
6 actually has appeared for your group and filed the papers on
7 behalf of your group. And so this legal argument is one that,
8 under the rules of the court, should be presented by your
9 lawyer.

10 Is your lawyer here?

11 MR. NATAL ALBELO: We haven't been informed, Your
12 Honor. This is the first time we hear that we were going to
13 be given an opportunity to speak here today in terms of the
14 claim that we filed in Puerto Rico's court and that was
15 removed last Tuesday night by the Fiscal Control Board.

16 So no, I had conversations with my lawyers as of this
17 morning, and they were not informed in any way, shape or form
18 they would have to be present here today.

19 THE COURT: Well, it is just -- so your lawyer is
20 Roberto Maldonado Nieves?

21 MR. NATAL ALBELO: Yes. Yes, Your Honor.

22 THE COURT: Well, the normal rules of procedure in
23 the court are that someone who files a paper and wishes to
24 advocate in a hearing is not only allowed, but expected to
25 come to the hearing if they want to speak.

1 Having said that, I think you're at least three
2 minutes into the five-minute statement, and I will let you
3 finish the statement on behalf of your group.

4 MR. NATAL ALBELO: Oh, Your Honor, I'll just round up
5 and I'll continue my statement when you allow me in terms of
6 the representation of one of the 24 public testimonies.

7 But in essence, what we're trying to say is that this
8 Court has to allow for the issue of how this bill was passed
9 in Puerto Rico's House of Representatives to be taken care of
10 before you decide on if you will move forward with this
11 Adjustment Plan, because if not, the legality of this Plan
12 would be in question.

13 And I would respectfully argue that, in a sense, if
14 you're looking for certainty moving forward, moving forward
15 with this legality question would not be in the best interest
16 not only of the people of Puerto Rico, but also in the best
17 interest of the other parties represented here.

18 Thank you, Your Honor.

19 THE COURT: Thank you.

20 Mr. Eisenberg, come up.

21 There is another speaker scheduled before you, sir.
22 Are you coming up to speak or are you coming up because you
23 have a problem?

24 MR. EISENBERG: I'm sorry. No. I apologize, Your
25 Honor.

1 THE COURT: I thought you had a problem. Okay.
2 Fine.

3 So the representative of the cooperativas objectors.
4 Good morning, sir.

5 MR. LUGO MENDER: Good morning, Your Honor, court
6 staff and all people present. My name is Wigberto Lugo
7 Mender.

8 I appear here today before this Honorable Court in
9 the name of Cooperativa de Ahorro y Credito de Rincoln,
10 Cooperativa de Ahorro y Credito Zeno Gandia, Cooperativa de
11 Ahorro y Credito del Valenciano, and Cooperativa de Ahorro y
12 Credito de Juana Diaz.

13 These four entities are part of 115 community-based
14 nonprofit credit unions which serve over a million members and
15 depositories island wide.

16 As a result of an improper misuse of the government's
17 regulatory powers, resources of these credit unions were taken
18 by the Commonwealth and its instrumentalities, including
19 COFINA. In order to protect the interests of their members
20 and depositors, various credit unions filed an adversary
21 proceeding.

22 The record of this Honorable Court will show that on
23 May 22, the year 2018, several credit unions, including the
24 four appearing herein today, filed an adversary Complaint
25 which was docketed as Case Number 18-28. The parties named in

1 | this Complaint are the Commonwealth of Puerto Rico,
2 | Cooperativa Publica Para la Seguridad y Seguro de Cooperativas
3 | de Puerto Rico, COSSEC, which is the regulatory branch within
4 | the system, the Government Development Bank, and other
5 | parties.

6 | Among others, and within the causes of actions,
7 | claimants in this Complaint are, first, an exception to
8 | discharge pursuant to the provisions of Section 11 U.S.C. 105,
9 | declaratory judgment, and exception to discharge pursuant to
10 | PROMESA provisions, provision of contract and warranties,
11 | promissories to uphold, violations of security statutes,
12 | violations of fault, negligence, violations of officious
13 | manager statutes, fraud, misrepresentation and omission
14 | statutes.

15 | Our objection in this case, Your Honor, seeks to
16 | preserve our right to the judicial adjudication of the state
17 | case, meaning the adversary proceeding --

18 | THE COURT: Yes.

19 | MR. LUGO MENDER: Furthermore, the protection of the
20 | credit unions and of their members and depositories is aligned
21 | with the policy of a Plan of Adjustment of a municipality,
22 | which is the higher aim of ensuring the governmental function
23 | of protecting and serving the municipality's citizens.
24 | Failure to protect the credit unions and their members and
25 | depositories, including those claims asserted under adversary

1 proceeding 18-28, defeats that purpose by affecting that same
2 constituency.

3 Based on that published by COSSEC, as of September
4 18, plaintiff of adversary 18-28 had 152,000 members and
5 approximately 25,000 nonmember depositors. The parties whom I
6 represent deem necessary that the Court limits those
7 provisions contained in the Plan of Adjustment, which appear
8 to release and discharge not only the claims, but also the
9 parties -- but also other parties which are under the
10 jurisdiction of this Honorable Court in active and still
11 pending litigation docketed under adversary 18-28.

12 This is detailed in the Motion for Objection, which
13 was filed under dockets 415 and 476. Absent a limitation on
14 the releases, exculpations, and discharge provisions, the
15 right to the judicial adjudication of unrenounced and
16 nonreleased claims and rights asserted in the adversary
17 proceeding may be severely effected unknowingly, in foundation
18 and in violation of the credit unions' principal rights.

19 As was done in Section 30-12 of the Plan, which
20 incorporated language preserving the rights of plaintiffs and
21 defendants under adversary proceeding number 18 -- under other
22 adversary -- inserting that type of language will avoid the
23 failure of injustice at probably no significant cost to
24 COFINA's organization process.

25 On the contrary, confirming the Plan of Adjustment

1 with an intended release of the Commonwealth of Puerto Rico,
2 the validity of which is dubious, will cause the most
3 unwarranted set of circumstances that will result in a
4 significant financial and economic harm to the Commonwealth of
5 Puerto Rico -- to the public of Puerto Rico.

6 We have suggested a language, Your Honor, which we
7 believe may be inserted either in the Plan or in the Order of
8 Confirmation, which simply reads as follows: Notwithstanding
9 anything contained in the Plan to the contrary, the rights,
10 claims and defenses of all parties to adversary proceeding
11 number 18-28 shall be unaffected until duly adjudicated by the
12 Court.

13 This language provides clarity as to the preservation
14 of the rights to all parties to be active in pending
15 litigation.

16 That would be our proffer, Your Honor.

17 THE COURT: Thank you.

18 Now, Mr. Eisenberg, are you the first speaker?

19 MR. EISENBERG: I am, Your Honor.

20 THE COURT: Please come to the podium. So I'm
21 allocating you 20 minutes.

22 MR. EISENBERG: Thank you, Your Honor.

23 Good morning, Your Honor. Gary Eisenberg, Perkins
24 Coie on behalf of the GMS Group. And I want to start out by
25 saying that I will do my best to heed the Court's admonition

1 that I speak slowly, difficult as it may be for me.

2 THE COURT: We all appreciate that, especially the
3 court reporter.

4 MR. EISENBERG: Your Honor, I will try to be brief
5 because I think the points can be summarized fairly
6 succinctly. We've put out an extensive record. The Court has
7 admitted into evidence our substantial filings with exhibits
8 that make it clear that the following are essentially not
9 disputed.

10 Number one, in 2006, Puerto Rico was not in a
11 position to borrow from the credit markets. To induce people
12 who do not live on the mainland to lend money to Puerto Rico,
13 a Commonwealth in which they do not have voting rights, so
14 they can't vote to change the government if they don't like
15 the way the government is handling their money, they asked for
16 security, a lien. Banking 101, as the Third Circuit calls it.

17 They received a transfer to COFINA of the sales and
18 use tax revenues, a portion of it, and the bondholders
19 received a lien on those revenues, which ultimately are cash.
20 That is not in dispute. It was reaffirmed multiple times by
21 the Government of Puerto Rico, and it was on that basis that
22 the bondholders were induced to lend their money to COFINA, a
23 separate entity, because they could not trust the Commonwealth
24 not to backtrack from its promises to pay.

25 The revenues from the sales and use tax have been

1 sufficient every single year to fund, well in advance of the
2 end of the fiscal year, the portion of the monies payable to
3 COFINA so that the bonds could be paid.

4 No payment default occurred until these PROMESA
5 proceedings were filed. And the testimony before the Court
6 and the record established before the Court is essentially
7 undisputed, that the monies have always been sufficient and
8 are being projected to be sufficient in future years, assuming
9 the validity of the belief.

10 And so, therefore, if you are trying to upset this,
11 you have to come up with some way to vitiate the lien. The
12 only attempts have been through purported challenges to the
13 validity of the lien structure, and those really are all based
14 on essentially running afoul of the Constitution. Because in
15 addition to the protection of the lien, the creditors who lent
16 money through purchasing the senior and subordinated bonds
17 received two additional protections.

18 Number one, they lent the money to an entity that was
19 not eligible to file for Chapter Nine at the time they filed.
20 So they had assurance that their loans were not subject to
21 involuntary restructuring through the Bankruptcy Code process.
22 The proponents of the Plan claimed that that was simply a mere
23 legislative oversight, but it was a 32-year period between
24 eligibility for the Commonwealth in 1984 that they contend,
25 and then the enactment of PROMESA 32 years later.

1 I'm sorry, but legislative oversights are an invalid
2 way to adjudicate substantial claims, especially when
3 bondholders are induced to make loans to a
4 Commonwealth-created entity precisely because of the absence
5 of the ability to file for Chapter Nine.

6 And then the second thing upon which they relied is
7 the provision of the Constitution that prohibits the taking of
8 private property without the payment of just compensation.
9 The Supreme Court has made it clear for a long time that a
10 lien is a property interest, and if it is taken, that is a
11 violation of the Takings Clause and it must be compensated.

12 Here we're dealing with a lien on cash. We're not
13 dealing with a situation where there is an asset like a
14 building which could fluctuate in value, where senior
15 bondholders might have first priority on the building and
16 juniors a junior priority, and the building could decline in
17 value and not have enough value to pay the juniors off.

18 We're talking about cash, which indisputably is
19 sufficient to pay all of the bondholders in full, which I will
20 get to in a moment. It also means that the subordination
21 provisions really don't ever ultimately matter, because when
22 there is collateral sufficiency for both the senior and the
23 junior classes, they both get paid in full and subordination
24 is an irrelevant concept.

25 But the notion that they were protected from having

1 their lien rights taken and that they had a security interest
2 in cash, that means that taking that lien away is a taking.
3 And you can't simply say, well, if you have a lien that would
4 have paid a hundred cents on the dollar, I can leave you 56
5 cents on the dollar and I don't have to count the 44 cents on
6 the dollar that I've taken.

7 Every single one of those 44 cents on the dollar
8 independently, in and of itself, is a stick in the bundle of
9 property rights that form the lien on each of those dollars.
10 And taking that money away from the juniors is a taking, and
11 that is the way the case law comes out under *Armstrong* and its
12 progeny. This is not a *Penn Central* takings case.

13 That is the situation that is the reality of the
14 bondholders until the PROMESA cases are instituted. And there
15 is basically an unending assault on the structure of the
16 COFINA bonds, purely trying to rely on the assertions by the
17 Commonwealth that it itself is somehow able to backtrack on
18 its own repeated assurances that the lien is a good lien.

19 There are two possible outcomes in an actual
20 litigation. The lien is a good lien or the lien isn't a good
21 lien. And what happens to be the case, Your Honor, is that if
22 you look at those outcomes, there is not a situation that has
23 had evidence presented before this Court and this hearing that
24 ever is a situation where the seniors can wind up doing better
25 than the juniors, or that the juniors don't get paid in full

1 if they both prevail.

2 If the lien is a good lien, Your Honor, then the
3 seniors get paid and the juniors get paid. The revenues are
4 sufficient. That's essentially not disputed by Mr. Rodrigue's
5 testimony, and it's not disputed by the statements of the
6 Treasury reports that are in evidence before the Court.

7 So there's complete payment if the lien is a good
8 lien, and there's no default and no subordination is invoked.
9 If the seniors invoke subordination based on an event of
10 default -- well, the only default that is purported to be
11 alleged is the attack on the structure itself. By the seniors
12 purporting to support a proposed attack on the structure
13 itself, they can't benefit from challenging the very structure
14 that was put in place for both the seniors and the juniors.

15 But even if that were to be the case, Your Honor, if
16 that subordination were to take effect, Mr. Rodrigue
17 acknowledged on the examination that was taking place
18 yesterday, that ultimately, you would just simply shift the
19 order in which the payments occurred to both the seniors and
20 juniors and they would all be paid in full. Again, the
21 seniors and the juniors, with the same results, each getting
22 paid in full.

23 The only other possibility is that the litigation
24 results in a loss. If the lien is invalidated, then the
25 situation is the seniors don't have a lien and the juniors

1 don't have a lien.

2 There was some discussion about the possibility that
3 there may be claims that could be asserted by both the seniors
4 and the juniors against the Commonwealth for committing a
5 taking, for impairing the structure, for tortious interference
6 with contract, but those would all be direct claims of
7 individual bondholders against the Commonwealth, to which no
8 subordination provision would apply.

9 And however much would be the payment ultimately to
10 those unsecured claims of both the seniors and the juniors,
11 they would be the same percentages. There is no circumstance
12 where the seniors can do better than the juniors given that we
13 have cash as the collateral, cash in sufficiency to pay in
14 full, and cash over a stream of time that will result in
15 payment in full.

16 The result of all of that, Your Honor, is that any
17 proposed settlement that allocates a greater percentage to the
18 seniors than to the juniors is unfair, improper, and we submit
19 clearly have been negotiated in bad faith, as evidenced by the
20 fact that the juniors were essentially cut out of the process.

21 The Court heard the testimony from Mr. Elliott to
22 that effect. The Court has heard the argument of Mr. Hein and
23 has his Declaration to that effect.

24 And yesterday when Mr. Rodrigue was on the stand, he
25 identified four or five different holders of bonds who were

1 supposedly involved in the negotiations, all of whom he
2 acknowledged either also had senior bonds or were insurers of
3 Commonwealth General Obligation bonds in a much greater
4 volume, which gave them an incentive and a lack of -- interest
5 in this because they would have an incentive to see the
6 Commonwealth prevails, to minimize the insurance payments on
7 account of their own senior positions on the Commonwealth bond
8 that they've insured.

9 So you don't have any circumstance that is the result
10 of any outcome where the seniors really can assert and have an
11 evidentiary basis that they would do better than the juniors.
12 There may be trading differences, Your Honor, but those are
13 not sales in the market. Those are not payors entitled to
14 make payments on the claim.

15 And so, therefore, that is the basis of having us
16 establish that 1129(a)(3) is not met, because this Plan and
17 this settlement together have plainly not been negotiated in
18 good faith, because they've deprived the junior creditors of
19 representation and they've resulted in a wildly deviant
20 imbalance in a circumstance where there should never be an
21 imbalance because all the outcomes are the same for both the
22 seniors and the juniors.

23 I think I've made a point of the fact that there is a
24 taking, and under the Fourth Amendment and Fifth Amendment,
25 with Mr. Hein's papers that we joined in, Puerto Rico does not

1 have a right to conduct a taking any more than a state or
2 municipality.

3 And so those are the two points that we think compel
4 denial of the Confirmation of the Plan and confirmation of
5 settlement. I also note, were this to be litigated to the
6 fullest, because there's no difference in outcome -- seniors
7 or juniors approving a settlement effectively puts a large
8 difference between the two. Effectively puts a difference,
9 absent a proceeding has to be put into effect.

10 And finally, the Plan provision that purports to give
11 releases to anybody that had any of these bond issues is
12 nothing more than an attempt to whitewash responsibility that
13 may be due and owing under the law for other parties who bear
14 responsibility for having had this fiasco come about the way
15 it is, and the Bankruptcy Code, PROMESA, and the various
16 statutes binding on this Court do not authorize the release of
17 third party claims of parties who are not debtors in
18 proceedings before this Court.

19 I know that the proponents are going to argue that
20 Section 254(e) of the Bankruptcy Code is not incorporated into
21 PROMESA, but still, there's no authority to wipe out a claim
22 that one of my clients may have against a third party, not a
23 debtor here, when that party, who is essentially seeking
24 release from that claim, has not been a debtor proceeding
25 before this Court.

1 I realize I asked for 20 minutes. I hope I have not
2 spoken too fast, but I think I've made the points I need to
3 make, Your Honor. So in the interest of going forward, I
4 thank the Court for its time and allowing me to be heard.

5 THE COURT: Thank you, Mr. Eisenberg.

6 Mr. Elliot, do you want to speak next? Good morning.

7 MR. ELLIOTT: Good morning.

8 It is with great humility that I'm here in front of
9 the Court, Your Honor. I've changed some of what I wanted to
10 say in the interest of time. Mr. Eisenberg, I have to say, he
11 did a good job representing a lot of the points I wanted to
12 make.

13 I just wanted to make a couple of other points, too,
14 Your Honor. One, thank you, and it's a great testament to the
15 legal system that somebody like myself can come up, be heard
16 in front of Your Honor, the Court, in front of the Oversight
17 Committee, that I can object to some of the most powerful
18 financial firms and law firms in the country.

19 THE COURT: I think you're right --

20 MR. ELLIOTT: I did this because of what Gary said --
21 sorry. I saw there was a tremendous amount of discord between
22 the junior holders, which I believe have an equal lien and
23 right of claims.

24 And if you recall, Your Honor, in my letter to you
25 back in November -- it's quite ironic that I'm here arguing on

1 the rejection of a more rapid claim. I believe that I was the
2 first one to write a letter saying -- you know, I made the
3 argument that we have a constitutional right against having
4 our claims taken.

5 I believe I also made the claim that I created my
6 firm to provide a service to common people, to people that
7 don't have billions of dollars, like the people that are
8 representing the seniors. I charge a very small amount for
9 what I do, and I work very hard to find good value for my
10 clients that support their retirement.

11 And in order for me to be able to do this, I need to
12 be able to -- in my letter to you, I stated the reason why the
13 United States is so successful financially and in corporate
14 ways, is that we have the strong -- we have the power of law
15 and we uphold property rights. That's the reason why people
16 from all over the world come to the United States and invest
17 money in our country.

18 That's why I, as a small investor, have access to
19 public information, and can say, the government, Puerto Rico's
20 promise to pay me and my clients that worked very hard for it
21 -- I don't need a litany of lawyers that I'm spending 200
22 million dollars on to make my case.

23 Now, one other point my friend here didn't bring up
24 is that, I hope all the kids back home show us, education is
25 important. But they acted in good faith. My expert

1 testimony, my expert opinion that I provided to the Court was
2 not only are the juniors (sic) asking for every penny of their
3 money back, they are actually, in many instances, getting well
4 above the amount of money that they asked for.

5 THE COURT: Did you mean to refer to the seniors just
6 then? I'm just making sure.

7 MR. ELLIOTT: Yes.

8 I had just stated to the Court the nominal amount of
9 recovery can be very different than other recoveries. The
10 fact seniors have been able to get 93 cents on the dollar,
11 that they get tax-free coupons, whereas before a lot of their
12 issues were tax free, it's a huge issue.

13 They get a coupon. They get it non-callable for a
14 number years. That actually provides them with recovery above
15 a dollar. Above a dollar. And that comes from the junior.

16 And it's important to note, the people of Puerto Rico
17 have made a lot of sacrifices. They are one of the largest
18 holders of COFINA juniors. And their interest is in COFINA
19 juniors. So we are in alignment with the people of Puerto
20 Rico.

21 And thank you, Your Honor, for the opportunity to be
22 here. I am blessed to have met the folks at the Oversight
23 Committee. I think it's worked very hard to get to a good
24 resolution, just, respectfully, haven't had somebody
25 advocating, with the complex math that they're going through

1 -- and their expert said everything they said. There's no
2 difference between the two.

3 Finally, Your Honor, one last point. I was reviewing
4 the letters and, you know, things that individuals -- you
5 spend a lot of time making sure everything is being heard, and
6 I think maybe my testimony is part of what you can see,
7 inherent conflict, but -- in the countless letters of the
8 disenfranchised, and I needed to be a second person, for a
9 second interest.

10 Finally, I want to make a quote. Hopelessly
11 conflicted. Hopelessly conflicted. That's what Whitebox
12 stated in their suit against Bank of New York, who is the
13 fiduciary responsible for holding both the seniors' and
14 juniors' money.

15 The juniors themselves claimed it is impossible for
16 one person to represent both parties. So the largest
17 percentage of par value is the junior interest. We haven't
18 been represented. We are small, mom and pop investors. And
19 we're here now to ask you to reject this motion, as it is
20 unfair, it is unconstitutional, it is completely against
21 PROMESA, which as you know requires that whatever agreement
22 comes to be would provide us with as much as we get for
23 litigation. And it's absolutely impossible to tell the
24 seniors would get more than the juniors if this were
25 litigated.

1 Thank you, Your Honor.

2 THE COURT: Thank you, Mr. Elliott.

3 And now I will turn to Mr. Hein in New York.

4 MR. HEIN: Yes. Thank you very much, Your Honor.

5 I intend to focus my remarks on the legal and
6 constitutional reasons the Plan cannot be confirmed, and in
7 particular, respond to the conclusions of law and the
8 arguments in the paper that Plan proponents filed on or after
9 January 9, to which we have not yet been able to respond.

10 An overarching point, Your Honor, is the proposed new
11 bonds are to be secured by what in substance is the same
12 statutory lien as the current COFINA bonds. The Oversight
13 Board describes the new bonds as secured by a statutory lien
14 in the COFINA Fiscal Plan. That is exactly how the Oversight
15 Board, in a 2017 brief to the First Circuit, described the
16 current COFINA bonds.

17 The Oversight Board told the First Circuit that the
18 current bonds are, quote, secured by a statutory lien,
19 unquote. That's my declaration, Exhibit K, record 4606-7, at
20 pages 78 to 59.

21 The new bond legislation describes the pledged taxes
22 as present and future revenues and collections generated by
23 the applicable share of the sales tax. The official statement
24 for the current bonds uses essentially the same language to
25 describe the security for the current bonds under Act 91.

1 Namely, all present and future collections of the pledged
2 sales tax are transferred to and made the property of COFINA.

3 And both the new bond legislation and Act 91, the
4 current legislation, are express that COFINA revenues do not
5 constitute available resources or revenues of the
6 Commonwealth.

7 The Plan proponents do not want Your Honor to rule on
8 the legality of the current COFINA lien and bonds, but as Your
9 Honor noted at the outset this morning, they do want Your
10 Honor to issue some very, very specific legal rules and
11 factual findings on the materially same, new COFINA lien and
12 bonds.

13 The extensive proposed findings and conclusions of
14 law and Proposed Order, I think it's over 120 pages of
15 materials, that has just been submitted by Plan proponents the
16 last couple of days, ask Your Honor to, quote, specifically
17 determine, closed quote, that the new lien against the pledged
18 taxes is valid.

19 They ask Your Honor to specifically determine that
20 the COFINA revenue shall not constitute available resources or
21 available revenues of the Commonwealth, and ask Your Honor to
22 judicially determine that all new COFINA bonds be stamped with
23 the legend, to be confirmed by the Order of the Court.

24 But since the new liens and new bonds are
25 substantially the same as -- judicially the same as new liens

1 and new bonds, if the new liens are binding, then so must be
2 the new bonds. Simply put, Your Honor, unless Your Honor
3 would issue an Order upholding the validity of the current
4 lien and current bonds, Your Honor cannot issue the judicial
5 determinations you have been asked to issue in this Proposed
6 Order.

7 But if Your Honor can issue the determinations
8 they're seeking, then the current liens and current bonds are
9 also legal and valid and enforceable. And there is absolutely
10 no legal justification to give away half of the collateral,
11 almost half of the collateral as the Plan would do.

12 Your Honor, Plan proponents have created a legal
13 catch 22 for Your Honor. If Your Honor does not first decide
14 the legality of the current COFINA liens and bonds, as we
15 respectfully request, Your Honor, we would submit, cannot
16 literally authorize the stamping of your judicial imprimatur
17 on the new bonds as the Plan proponents have requested.

18 And, Your Honor, I do not believe this is simply a
19 question of Plan proponents giving you more specifications for
20 their factual basis and legal authority. This inherent catch
21 22 they've based you with, is a problem, means Your Honor
22 cannot, I respectfully submit, approve the Plan.

23 Let me turn now to the constitutional doctrines that
24 preclude the discrimination that the Plan provides. My
25 objection and supplement detailed the constitutional doctrines

1 that preclude approval of a plan that discriminates based on
2 place of residence against United States citizens in the 50
3 states and in favor of residents of Puerto Rico.

4 The discrimination is evident on the face of the
5 Plan. Puerto Rican residents, simply because they're Puerto
6 Rican residents, get the right to elect a larger distribution.
7 And if you look at the disclosure statement, compare tables
8 2-A and 2-B, that's at docket 4364, at 21 to 23, you'll see
9 that Puerto Rico residents can elect a two percent cash
10 payment not available to anyone in the 50 states.

11 Puerto Rico residents can elect one tranche of
12 interest bearing bonds mature in 22 years, 20, 40, as compared
13 to the 11 splintered fragments going out 40 years to 2058 that
14 citizens in the 50 states get. Plan proponents argue, well,
15 this discrimination is justified, but I submit that
16 discrimination against United States citizens because they do
17 not reside in Puerto Rico violates the Constitution
18 irrespective of any asserted justification.

19 48 USC 737 is express that the same rights that
20 United States citizens have in the 50 states also apply in
21 Puerto Rico. And there's no justification exception in the
22 statute for discrimination. Moreover, it's not justified to
23 discriminate here.

24 Many of the COFINA bonds were originally sold to
25 residents of the 50 states as federally tax exempt, but other

1 bonds were sold to Puerto Rico residents as federally taxable.
2 Originally sold as federally taxable, because the residents of
3 Puerto Rico are not taxed federally, just in Puerto Rico.

4 Other bonds were sold to Puerto Rican government
5 entities and were not sold on the basis of being tax exempt.
6 A Puerto Rican resident or entity who bought bonds without a
7 federal tax exemption has no right to exempt -- a federally
8 tax exempt bond. They get exemptions of Puerto Rico Income
9 Tax just at the time they bought the original bonds.

10 That's what they should get. But here they're
11 getting an additional benefit. The added benefit going to
12 residents of Puerto Rico alone includes cash, cash that could
13 otherwise be distributed prorata among bondholders. And they
14 also, as I mentioned, get significantly better bond coup --
15 the coupon paying bond, in one tranche maturing in 20, 40, not
16 11 splintered fragments.

17 In a major institution -- you could have the biggest
18 institution based in Puerto Rico. They could have bought at
19 eight to ten cents on the dollar, as some did, according to
20 the records I submitted as Exhibits B and C to my Declaration.
21 They will now get the benefit of the separate cash and the
22 better bonds on top of their huge profit, because they bought
23 at eight to ten cents on the dollar.

24 Contrast a retired bondholder in the 50 states who
25 invested, as I did, at par, at the original offering price, to

1 have a stream of retirement income. We don't get those
2 special benefits.

3 The professed concern that the Plan proponents -- I'm
4 sorry. The Plan proponents have said there's a limited number
5 of bonds, but that underscores another problem here. Plan
6 proponents want to proceed without knowing what the IRS
7 position is.

8 The IRS has something to say. They wanted to say it.
9 Because of the government shutdown, we have not heard what
10 their position is. Respectfully, I believe Your Honor must
11 withhold the ruling until we know the IRS position.

12 According to the record, the taxpayers' exemption may
13 be imputed going out to 2058 if any of those are taxable.
14 Under 11 U.S.C. 1125(a), bondholders are entitled to a clear
15 disclosure of tax consequences. They were required to vote
16 when there's been no disclosure of the IRS position.

17 Let me now turn to the Contracts Clause. There can
18 be no dispute that the new bond legislation is a law. And by
19 its terms, that law, to quote the legislature of Puerto Rico's
20 statement, no difficulties, quote, will serve to release the
21 lien that holders of COFINA bonds currently have and thus,
22 impair the obligation of the contract.

23 Plan proponents argue, well, the law does not take
24 effect unless and until the Court confirms a plan. Plan
25 proponents argue that sidesteps the constitutional problem,

1 but respectfully, it does not.

2 First, this Court must follow the U.S. Constitution.
3 This Court cannot sanction an abrasive plan, premised on
4 Puerto Rico legislature, that is a violation of the Contracts
5 Clause.

6 Second, under Section 2174(b)(3) of PROMESA, a
7 requirement of plan confirmation is that the debtor is not
8 prohibited by law from taking any action necessary to carry
9 out the plan. The U.S. Constitution Contracts Clause is such
10 a legal prohibition. So under PROMESA, the Court cannot
11 confirm the Plan.

12 Third, there is no Congressional authorization
13 exception to the Contracts Clause. Even if Congress and
14 PROMESA did purport to authorize Puerto Rico to impair
15 existing contracts, that Congressional legislation would not
16 be effective.

17 The Supreme Court in the *Saenz* case -- it's 526 U.S.
18 489, at 508. I cite it in my Supplement -- specifically ruled
19 that Congress' legislative powers may not be exercised in a
20 way that violates other specific provisions of the
21 Constitution.

22 Fourth, there is no judicial approval exception to
23 the Commerce Clause. If there is a law that impairs the
24 violation of contracts, a Court blessing or adopting that
25 legislative impairment does not obviate the constitutional

1 violation.

2 Congress and/or PROMESA did not in any effect
3 authorize retroactive impairment by the Puerto Rico
4 legislature, and the Plan proponents here ignore the sections
5 of PROMESA cited in my objection at Docket 4545, at page 18,
6 Section 4121(d), read together with 2174(b)(7), 2194(k),
7 2194(m)(5)(B), which echoes 2174(b)(6) and 2195(a).

8 I submit, Plan proponents argue it is not Puerto
9 Rico's legislation clause that impairs the contract. They
10 say, well, there's a settlement that impairs the contract.
11 But there's no settlement exception to the Contracts Clause,
12 much less parties who are not parties to the settlement and
13 whose contracts will be impaired.

14 Eight, Plan proponents say the *United States Trust*
15 opinion recognizes that a state, or here, Puerto Rico, could
16 impair contracts, quote, if it is reasonable and necessary to
17 serve an important government purpose. But the pledged sales
18 tax revenue for the current COFINA bonds is roughly two times
19 annual debt service. COFINA can pay all bonds as long as the
20 lien is not abrogated.

21 The only evidence in this record is that if the lien
22 is not abrogated, there will be sufficient revenues. The
23 Senior COFINA's witness, Mr. Rodrigue, admitted that
24 yesterday.

25 Also, the pledged sales tax revenues do not belong to

1 the Commonwealth. Mr. Rosen yesterday admitted that the
2 pledged sales tax revenues do not currently belong to the
3 Commonwealth. That may be disputed by others, but there has
4 been no judicial Order ruling that the pledged sales tax
5 revenues belong to the Commonwealth. No Court has so Ordered.

6 In any event, the notion that the Commonwealth needs
7 more money and thus it is reasonable and necessary to take
8 pledged sales tax revenue that does not belong to the
9 Commonwealth and that no Court, no Court has ever held belongs
10 to the Commonwealth, this also leads to hold -- an
11 unreasonable and unnecessary standard, even looking at it from
12 the view of the Commonwealth desiring more money.

13 I looked at specific facts based on statements,
14 documents and website materials from the Puerto Rican
15 Government and Puerto Rican officials. There has been no
16 official response to any of these facts by Plan proponents.

17 Puerto Rico represents to bondholders -- and I
18 mentioned this yesterday. This is Exhibit S -- that on a
19 proper analysis, Puerto Rico stands last in outstanding debt
20 per capita in all U.S. jurisdictions, because Puerto Rican
21 residents don't pay Federal Income Tax as a general matter,
22 and thus, do not pay income tax toward the federal debt.

23 As Puerto Rico's own current auditors concluded that
24 Puerto Rico's tax burden is less than one-third of the average
25 OECD country, Puerto Rico's own comptroller, their own

1 comptroller shows on his website -- and you can look it up,
2 it's up there today -- that Puerto Rico has taken on literally
3 thousands of contracts for advertising, public relations and
4 consulting since July 1, 2018, alone. Thousands of contracts
5 for PR, advertising and consulting.

6 Puerto Rico does not dispute it continues to pay
7 Christmas bonuses, at least 400 million in Christmas bonuses
8 since the Governor declared in 2015 that the Commonwealth
9 would not pay its debt.

10 At the current rate, Puerto Rico is going to end up
11 spending over two billion dollars, over two billion dollars
12 just in its effort to avoid its debt. Puerto Rico, and again
13 this is not disputed, just two months ago, lowered taxes,
14 lowered taxes for people in Puerto Rico by about two billion
15 dollars.

16 Puerto Rico, according to the financial records that
17 they publish on the internet, has over 12 billion dollars in
18 cash currently. 12 billion dollars in cash. And there's no
19 dispute that over 1.8 billion in pledged sales tax revenues
20 sits in bank accounts, and that this money could be disbursed
21 to COFINA bondholders but for the distribution being held up
22 by this proceeding. But for this proceeding, the money would
23 have been disbursed, bondholders would be fully paid.

24 I believe that the United States Supreme Court, in
25 *United States Trust*, viewed the burden of showing "reasonable

1 and necessary", as falling upon the state, or here the
2 Commonwealth, that is trying to avoid or impair its own
3 obligations. And I address that in my objection, page 20,
4 note ten.

5 But regardless of where the burden lies, if Puerto
6 Rico can just brush off secure bondholders and justify the
7 impairment of debt obligations on this record, respectfully,
8 Illinois, New Jersey and Connecticut are not going to be far
9 behind.

10 Other factors that don't militate against deference
11 to Puerto Rico here include the fact that here the
12 Commonwealth's self interest is at stake. To quote the United
13 States Supreme Court in the *United States Trust* case at page
14 26, the fact the Plan discriminates in favor of some parties,
15 the ones who helped negotiate it, and including some Puerto
16 Rican interests, the fact the impairment is not just contrary
17 but is substantial permanent, the fact that the impairment
18 operates retroactively. Puerto Rico took our money. Now it
19 just wants to keep it.

20 The fact is Puerto Rico is violating its statutory
21 non-impairment covenant. Puerto Rico agreed by Statute not to
22 impair the rights of bondholders, but now has defied that
23 solemn pledge. All these factors militate against deference
24 to Puerto Rico's view here. Indeed, the force of the
25 constitutional prohibition implied in *United States Trust*

1 should have even greater application in this case.

2 Chief Judge Burger, concurring, would have imposed on
3 a state seeking to incorporate its own contracts, bondholders,
4 an even more stringent standard. The Chief Justice said, the
5 state must demonstrate it is essential to an important state
6 purpose. The Chief Justice further said, it must state that
7 it did not know and could not have known the impact of the
8 contract on the state at the time the contract was made.

9 And that I would argue would be the standard if the
10 Supreme Court would hear this matter. It would certainly be
11 urged to adopt and could adopt the covenant abrogated in
12 *United States Trust*. And the Supreme Court held there was a
13 violation of the Contracts Clause there. It did not directly
14 jeopardize payment of interest and principal of the
15 bondholders.

16 This was a fairly technical point, as the dissent
17 pointed out in that case involving whether or not the Port
18 Authority could subsidize rail passenger transportation from
19 revenues. Here the impairment is not technical. It tears up
20 the obligation to pay principal and interest. This case is
21 from *United States Trust*.

22 A few points on the Takings Clause. Plan proponents
23 do not dispute there's been a taking here. Rather, they argue
24 that although -- a taking occurs while subordinate bondholders
25 are supposedly provided just compensation, but there has never

1 | been a judicial ruling that invalidates the current structure
2 | and lien. And the Plan proponents admit there's currently a
3 | statutory lien in place.

4 | You have that pension from 2013 that I referred to
5 | yesterday, Exhibit S, page 63 of the Hein Declaration. You
6 | have the fact that, as I mentioned, the Oversight Board itself
7 | represented to the First Circuit Court of Appeals just in 2017
8 | that the bonds are, quote, secured by a statutory lien against
9 | pledged SUT revenue. That remains the current status. As of
10 | today, the bonds are secured by a statutory lien.

11 | The Oversight Board also admitted to the First
12 | Circuit that the pledged sales tax revenue are not available
13 | revenues or available resources under the Puerto Rican
14 | Constitution. That's not just me saying this. This is the
15 | Oversight Board representing to the First Circuit Court of
16 | Appeals that the pledged sales tax revenues currently are not
17 | available revenues or not available resources under the Puerto
18 | Rico Constitution.

19 | And the Puerto Rico legislature, in the new bond
20 | legislation, the legislature states that the COFINA
21 | bondholders, quote, currently have, close quote, a quote,
22 | lien, close quote, over pledged sales tax revenues. And the
23 | new bond tax revenue purports to release a lien over 17.5
24 | billion of what it calls, quote, previously pledged SUT
25 | revenues.

1 A very premise, as I noted, of the new liens and new
2 bonds is that Your Honor will issue a new Order that confirms
3 the new lien, judicially determines the new bonds, materially
4 the same as the current lien, and the bonds are legally
5 binding and enforceable.

6 So how and by who has it been decided that pledged
7 sales tax revenues are supposedly only worth half of what
8 they're really worth, even though no court has invalidated the
9 structure, even though the new lien and new bonds would be
10 materially the same as the old lien and the old bonds, while
11 Plan proponents say, well, this was determined by settlement,
12 a reference to the confidential settlement process.

13 There's of course, as Your Honor knows, no public
14 record. We have no idea what occurred in that process. The
15 objecting bondholders in the 50 states were not participants.
16 We had no ability to be heard. There simply was no notice
17 saying to juniors, juniors, this is confidential confirmation,
18 you can reply to this e-mail address and are invited to
19 participate.

20 As Mr. Elliott pointed out, many bondholders have put
21 in letters to the Court and otherwise indicated their
22 concerns, and none of them were invited to participate.

23 There's also, fundamentally, whatever the merits are
24 of the mediation, it's not a judicial ruling. There's no
25 judicial opinion. It's a voluntary, non-binding process.

1 If someone had a desire to impose the result of a
2 confidential mediation process on junior bondholders, they
3 should have notified juniors; and in short, they should have
4 ensured that juniors without conflicts were represented in
5 that process.

6 All the participants in that confidential mediation
7 process receive special benefits. The junior bondholders do
8 not receive those special benefits who were not represented.
9 Our rights cannot be valued based on a confidential settlement
10 process in which we were not participants, and where it just
11 so happens that the people who were participants get special
12 benefits.

13 Before our property is given away, respectfully, we
14 are entitled to a judicial ruling on the validity of the
15 current COFINA structure and lien. Plan proponents themselves
16 admit there is a binary choice here. Either the COFINA lien
17 structure is valid or it's not. Simply because some people
18 have challenged the COFINA structure of the lien, it does not
19 mean it's valid.

20 Proponents admit it's a binary choice, either all
21 valid or not valid. Your Honor can judicially determine and
22 issue the rulings that you're being asked to do in that
23 Proposed Finding and Order. That COFINA revenues shall not
24 represent available revenues of the Commonwealth. If Your
25 Honor is willing to do that at the behest of Plan proponents,

1 respectfully, there is no basis to approve a Plan that gives
2 away almost half of the pledged revenues.

3 A few words in response to what Plan proponents also
4 argue on the Takings Clause. First, PROMESA does not
5 authorize a retroactive taking of bondholder property. And
6 again, I point to the section in my objection, page 15, note
7 eight.

8 Second, even if PROMESA, by its terms, authorized a
9 retroactive taking of the statutory lien, Congress by statute
10 cannot override the constitutional protections of the Takings
11 Clause. Plan proponents argue that under some 35 year old
12 bankruptcy court opinion from Colorado, COFINA bondholders
13 supposedly have no interest in future sales tax revenues, but
14 that's a legal issue the Court here needs to decide.

15 And Your Honor is being asked to judicially declare
16 and specifically determine, as part of the approval of the new
17 bonds, new bond legislation that says pledged sales taxes
18 include present and future revenues. The current lien is on
19 present and future collections.

20 If Your Honor believes what the Oversight Board
21 argues in its Reply, Your Honor cannot approve the new lien
22 and the new bonds. Your Honor cannot give the judicial stamp
23 of approval they're seeking if Your Honor believes what
24 they're arguing about, that 35 year old bankruptcy case from
25 Colorado.

1 The notion that there was just a mistake, as
2 Mr. Eisenberg has said, it's just false by its terms. If
3 we're going to abrogate property rights based on supposed
4 mistakes of Congress that last for decades, and also mistakes
5 of Puerto Rico officials who repeatedly confirmed the validity
6 of the structure and lien, if we're going to do it based on
7 the idea of a mistake having been made, the Rule of Law will
8 have lost all of its meaning.

9 The Oversight Board argued that had Congress
10 exercised its Territories Clause power, rather than bankruptcy
11 authority, that Congress could have abrogated bankruptcy and
12 under that power -- could Congress pass a law that
13 expropriates all private homes or all private businesses in
14 San Juan without compensation on the theory that the
15 Territories Clause trumps the Takings Clause? I don't think
16 so.

17 The Territories Clause clearly does not trump the
18 Takings Clause or the Contracts Clause or any other specific
19 Constitutional rights, as the Supreme Court in the *Saenz* case,
20 526 U.S. 489, at 508, indicates, I think, quite persuasively.

21 The Oversight Board's argument that the economic
22 impact is supposedly amenable on theory, it's a settlement
23 that has a Plan, but of course it's the Plan that has the
24 increment. The settlement without the approval of the Plan
25 has no legal force. Any claim that the distribution here to

1 junior bondholders is just compensation, also argues that the
2 tax revenues, if not given away, would be sufficient to pay
3 the debt.

4 Of course the Plan proponents have the burden of
5 proof here. No evidence has been argued that the sales tax
6 coffers have not been sufficient. The only evidence is that
7 they are.

8 So in sum, the Plan proponents have the burden to
9 show that the requirements of confirmation are met. Even
10 apart from PROMESA, the constitutional violations are an
11 obligation here. The United States is obliged to uphold the
12 Constitution. That's an obstacle. You don't even have to
13 look at PROMESA.

14 But PROMESA also requires, and Plan proponents have
15 the burden of proving that the Plan complies with law,
16 including the U.S. Constitution. That has not been shown by
17 Plan proponents. Section 2174(b)(3), thus, is not met.

18 Plan proponents also must prove that the settlement
19 is in the best interest of bondholders, which requires the
20 Court to consider whether, under bankruptcy law, junior
21 bondholders receive a greater recovery. And clearly they
22 would, because if you don't advocate the lien, junior bond
23 proponents get a percent. Therefore, 7142(b)(6) has been met.

24 One last thought. I know Plan proponents talk about
25 a vote. No vote can abrogate the Constitutional rights of

1 myself and others that are objecting.

2 Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Hein.

4 Mr. Dvores, you may come to the podium in New York
5 now.

6 MR. DVORES: Thank you, Your Honor.

7 Yesterday Mr. Rosen made reference to the ballot
8 counts in saying that this so-called settlement, the Plan of
9 Adjustment, had overwhelming support. Of course it had
10 overwhelming support from those who would benefit from the
11 Plan, the insurance companies, the seniors, all the members of
12 the negotiating committee who used the opportunity to have the
13 negotiations and the secret bargaining that went on, to enrich
14 themselves by trading in the bonds, all through this process
15 that lasted almost a year and a half. They're approving this.

16 They're approving a settlement which would give them
17 broad releases from any claims of causes of actions which we,
18 the junior bondholders, might have against them for their
19 unfair, illegal activities, and using this negotiation process
20 for unjust enrichment for themselves and to take advantage of
21 the unrepresented junior bondholders.

22 Then you have the people from Puerto Rico who
23 accepted this. Well, they're getting a better deal than the
24 juniors who live on the mainland, in the 50 states. All of
25 the ones that -- the members of the juniors who live in Puerto

1 Rico, are getting approximately double the income from their
2 bonds that the juniors who live in the mainland, the United
3 States, are getting from their bonds, because we, as juniors,
4 have to accept a settlement where not only are we not getting
5 the same recovery as the seniors, which we should be entitled
6 to under all the reasons given by Mr. Hein and Mr. Eisenberg
7 for a matter of a statutory lien, and the ability of Puerto
8 Rico's sales taxes to fully pay those debts, but we're also
9 being treated in a very miserable, shabby way, because our end
10 of the half a loaf theory, which states that as juniors,
11 somehow you can accept half a loaf and you should be happy
12 with that half a loaf, is the moldy half.

13 When you look at what the juniors are getting, look
14 on the mainland, we're getting half of our recovery in zero
15 coupon bonds. If you're a person like myself who bought the
16 bonds for income, the zero coupon bonds, which mature well
17 after I'm gone, have no value to me. And if I try to sell
18 them in the market, I couldn't get anywhere near their fair
19 value on the accrual rate, because I'm getting a fraction of
20 odd lots or very small odd lots which have really no practical
21 market value.

22 So even the so-called 56 percent recovery for the
23 juniors, as far as the people who live on the mainland, that's
24 really a sham. It's not true. And it's wrong.

25 This entire process needs to be sent back to where

1 the Court makes the ruling on the law. This settlement that
2 was imposed in place of a ruling from the Court on the law is
3 a settlement that was imposed by people who only were looking
4 out for themselves and are using the negotiation process for
5 themselves.

6 We have claims of unjust enrichments, breach of
7 fiduciary duty. We're going to go ahead with that. I would
8 suggest to the Court, that while we're waiting for the IRS to
9 rule on whether or not the exchange of new COFINA bonds in
10 so-called claim adjustment will be treated as tax free or
11 taxable, while we're waiting for the IRS to make a ruling on
12 that important issue, that perhaps this whole matter could be
13 sent back to the negotiation table, this time to include
14 unconflicted members who would represent the junior
15 subordinate bondholders, so that we actually do have a chance
16 to negotiate a better settlement, a fair settlement, and one
17 which would reflect the realities of law.

18 Thank you.

19 THE COURT: Thank you, Mr. Dvoves.

20 We will now take a break of ten minutes, and then
21 resume with comments from members of the public. And so
22 everyone, after I adjourn -- don't jump up just now, so we can
23 be orderly. Come back to your seats in ten minutes.

24 Thank you very much. We are adjourned. You can
25 stand and leave the room now.

1 (At 11:08 AM, recess taken.)

2 (At 11:29 AM, proceedings reconvened.)

3 THE COURT: Good morning. Please be seated.

4 We will now turn to statements by the members of the
5 public who have joined us here today to share their views.
6 And I will call out the names, and when I get to your name,
7 please rise.

8 So first, Nicole Crespo Martinez. All right. Not
9 here.

10 Rafaela Esteves. Please come forward.

11 Thank you. Good morning, ma'am.

12 MS. ESTEVES: Good morning. Greetings to everyone
13 present here today, and especially to you, Judge Swain. Thank
14 you for this opportunity.

15 My name is Rafaela Esteves. I would like to start
16 off by stating that as a citizen of Puerto Rico, I am here
17 because the people of Puerto Rico have had enough. This
18 hearing represents so much more than just a hearing to discuss
19 COFINA 9019. It's the legalities and ability to repay COFINA
20 bondholders looking to ensure a return on their investment.

21 THE COURT: I know the time period is short. I
22 apologize for that. But the court reporter still needs to get
23 everything down, so if you could go a little slower.

24 MS. ESTEVES: Okay. No problem.

25 This hearing is about the Puerto Rican people saying

1 we did not authorize this debt, and again, we have had enough
2 of our own government disrespecting us by creating this bill
3 and approving it within each legislative body behind the backs
4 of the people it was intended to serve.

5 In this hearing, we represent ourselves, because no
6 one is willing to represent us as our democracy intended.
7 There was no referendum held when this agreement, House Bill
8 1837, was presented by House Speaker Johnny Mendez Nunez of
9 the New Progressive Party back in November, 2018. Local media
10 sources didn't make this information public until the
11 following day. Why, you may ask. The answer is simple. This
12 party, our current administration, doesn't care what its
13 people have to say.

14 This administration has made crass decisions with our
15 pensions, our healthcare, our education, our workers' rights,
16 etc., without consulting the very people these public policies
17 are going to affect in the long run. We are here, Your Honor,
18 because we want a voice, and we want to make you aware of the
19 public's distrust in this COFINA Agreement and its domino
20 effect. We distrust this agreement because we do not confide
21 in this administration's intent. We absolutely do not feel
22 that our best interest was at heart when this bill was drawn
23 up and passed.

24 Unfortunately, I believe that this agreement doesn't
25 even honor our Constitution, Article VI, Section Two, which

1 establishes ground rules for the issuing and repayment of
2 bonds, loans and the taxation of its people. COFINA was
3 created in 2006 to bypass these directives, so the Puerto
4 Rican government could continue to issue bonds and other
5 public debt, even though we were already maxed out.

6 If our government can't uphold our Constitution, we
7 are here to make sure that we uphold our rights within our
8 democracy to ensure that this agreement becomes null and void.
9 Simply put, they can do better.

10 Regarding the SUT, we are currently the highest taxed
11 United States territory, yet we have the highest poverty and
12 unemployed rates per capita. If this agreement is approved
13 and signed by you, Your Honor, you would be condemning us to a
14 40 year long enslavement. We would not be able to sustain our
15 own modules. We would not be able to provide basic services
16 that our democracy demands be provided to the people.

17 We already feel broke, unsafe and insecure about our
18 future, which obligates us to make the decision to leave this
19 land and look for a better future in the continental United
20 States. People confuse us as immigrants, because although we
21 are citizens of this great country, our leaders treat us as
22 less than. If this is our situation, what would become of us
23 after defaulting on this agreement within the 40 years of its
24 installment?

25 The big picture is not being considered in this case,

1 and I will not stand by while my daughter's future and her
2 ability to thrive here is taken away and deprived of her. I
3 am originally from the Bronx, New York. I was born to a
4 Dominican mother and a Puerto Rican father. In my own
5 ignorance, I didn't know how my own people were being treated
6 here on the Island. It wasn't until I moved here that I
7 realized the injustices the Puerto Rican people, my people
8 continue to face and have faced for a century now. And I am
9 here to join hands with fellow boricuas in objection to this
10 COFINA agreement.

11 Investment returns on bonds and other public debt
12 cannot be more important nor held in higher regard than my
13 daughter's education, her safety, her healthcare, her quality
14 of life, and those of all our children.

15 In addition, the people carrying the Commonwealth on
16 their backs, working 30 years to establish their way of life
17 and that of their children, cannot even say they have a decent
18 retirement, and these senior bondholders are looking for more.
19 40 years' worth.

20 Seeing this agreement for what it is, certain people
21 want to make money off of the misery of our people. We are
22 here, I am here to implore the Court to reconsider this
23 agreement, and to force our administration and the Fiscal
24 Control Board set up through PROMESA, and all other parties
25 involved, to go back to the drawing board, and this time,

1 uphold the integrity and best interest of the people of Puerto
2 Rico.

3 I can only hope that the evidence submitted to the
4 Court in objection to this agreement, my humble words, and
5 those of my constituents have moved you and that you
6 reconsider the approval of this settlement.

7 I thank the Court again for the time granted to me in
8 my stance on this matter. My family's life and those of my
9 people depend on it.

10 THE COURT: Thank you, Ms. Estevez.

11 When court is in session, please, no applause. We
12 all have to remain quiet and respectful of each other.

13 Is Tashalye Grajales here?

14 Darlah Lopez Rodriguez?

15 Mr. Natal Albelo, this is your second opportunity.
16 Thank you.

17 MR. NATAL ALBELO: I'll take as many as I can use.

18 Good morning again, Your Honor. My name Manuel Natal
19 Albelo. I'm 32 years old, and I serve my country as a member
20 of Puerto Rico's House of Representatives.

21 As the youngest elected official in Puerto Rico, with
22 some luck, I'll be one of the few current government officials
23 that could possibly be around to see the consequences of the
24 judgment plan you have been presenting. Most of the people
25 deciding the future of my generation and generations to come,

1 respectfully, including Your Honor, will not be around to live
2 in their own skin the negative consequences of your decisions.

3 Pain and suffering, some have described as
4 inevitable. Yesterday, in your opening remarks, you mentioned
5 that regardless of your decision, you wouldn't be able to
6 satisfy the claims of all parties without provoking some pain
7 or suffering. Dolor (ph) is the Spanish translation for pain,
8 and I guess the question is, how do we measure something as
9 abstract and subjective as pain?

10 Before you decide on how to split this creature
11 called COFINA, I believe it's necessary for you to account for
12 the pain and suffering that my country has already endured in
13 order to satisfy the claims of those who support this Plan.
14 We do not come to this process and this Court having drawn the
15 same amount of blood, both figuratively and literally.

16 The individual and financial institutions represented
17 by these lawyers have not experienced dolor like the people of
18 Puerto Rico have for more than a decade in order to pay our
19 debt service, including COFINA, and comply with the austerity
20 policies forced upon us by the same economic interest heavily
21 represented here today, which of course is not limited to the
22 lawyers, to the lobbyists, to the media outlets, but also
23 includes the politicians they invest upon, as well as their
24 campaign managers, who coincidentally end up ripping the
25 bondholder Governor and the Fiscal Control Board that

1 negotiated this agreement.

2 Your Honor, how do you measure the pain and suffering
3 of 30,000 public employees that were laid off by Act Seven in
4 2009 in order to pay our debt? The pain and suffering of
5 30,000 public employees, who now have to work between five and
6 seven more years in order to retire, in some cases up to ten
7 more years after the minimum retirement age was raised by Act
8 Three in 2013. The 6,537 students at the University of Puerto
9 Rico lost since COFINA was created, and the millions of
10 dollars that have been gutted from the University's budget.
11 The 619 communities whose public schools were closed in just
12 the last five years, which represents 43 percent of our public
13 school system. The 700,000 Puerto Ricans that have been
14 forced out of the island since 2006. The 3,759 brothers and
15 sisters that have decided to take their own lives during the
16 same 12-year period, including 26-year-old Jose Ramon Alomar
17 Vega, who hung himself from a mango tree in front of his house
18 after a prolonged period of unemployment.

19 Only one side on this controversy has come to this
20 crosspoint having sacrificed plenty, in some cases their own
21 life. Regardless of your decision, one has to wonder what
22 would be the pain and suffering that Steve Tannenbaum and Josh
23 Berman would endure from this Plan when their vulture funds
24 bought over 680 million dollars of COFINA bonds after
25 Hurricane Maria.

1 Since James Glassman proposed a hearing of the
2 subcommittee in the western hemisphere in the summer of 2014,
3 DCI Group and others that laid a path to this point had a
4 particular outcome in mind, one that would favor bondholders
5 at the expense of the people of Puerto Rico.

6 But even the rich and powerful have to abide by the
7 rule of law. Last November, Puerto Rico's House of
8 Representatives passed the new bond legislation for COFINA.
9 The process that lead to this legislation violated our
10 Constitution, our laws, and the internal rules of procedure of
11 Puerto Rico's legislative assembly. My rights as an elected
12 official, and that of my constituents, were violated during
13 this process.

14 In December 2018, we filed a claim in Puerto Rico's
15 courts challenging the constitutionality of the new bond
16 legislation, as well as COFINA itself. Last Tuesday the
17 Fiscal Control Board removed the case, and in such, it admits
18 the new condition was effective to the COFINA Adjustment Plan.

19 I respectfully ask that you allow the Puerto Rico
20 judicial system to revise our claim before you move forward
21 with your decision. The legality of the newborn legislation,
22 as well as this Plan, is in question.

23 Thank you, Your Honor.

24 THE COURT: Thank you, sir.

25 Yansey Ramirez Maiz?

1 Nicole Rodriguez? Yes. Please come forward now.

2 Good morning.

3 MS. RODRIGUEZ: Good morning, Your Honor. My name is
4 Nicole Rodriguez, and I am the president of Maurice R. Ferrer
5 Puerto Rican Democratic Club, in Miami, Dade.

6 First of all, I want to thank you for giving me the
7 opportunity to speak on behalf of the community of Puerto
8 Ricans living in south Florida, who are concerned and keeping
9 tabs on what is happening to the families we left behind in
10 order to pursue a better life on the mainland.

11 You can ask the vast majority of Puerto Ricans living
12 in south Florida, if you had a better job, if you had a better
13 job opportunity, the guarantee of the pension you worked so
14 hard for, an affordable cost of living, and felt safe in your
15 neighborhood, would you have stayed in Puerto Rico? Most of
16 us would say that we would love to stay.

17 Boricuas living in the mainland have this island in
18 our mind and heart. We all have roots in Puerto Rico, whether
19 it be because of our family and friends that still live here,
20 or because we still have property here that requires us to be
21 up-to-date with issues that affect the island as a whole.

22 It is part of the reason why we, as a community, have
23 organized around issues within and out of the mainland. But
24 this issue devastatingly affects all our families here in
25 Puerto Rico.

1 We believe that justice needs to be at the forefront
2 in any decision made in our court systems. This is essential
3 to uphold the U.S. Constitution and enables us, as a society,
4 to pursue liberty and happiness.

5 With this said, how can we pursue justice by putting
6 sophisticated investors against the future of society. Right
7 now our island is already going through so many austerity cuts
8 in order to repay a debt that hasn't even been audited in a
9 transparent way for the people of Puerto Rico. There have
10 been hundreds of schools closed as a result of devastating
11 cuts to education, salary and pension cuts, decrease of
12 vacation days to employees. Government and community programs
13 have been slashed, if not altogether eliminated. And our
14 police department is suffering from these measures as well, to
15 the point that a vast majority of the cops are leaving the
16 island. And it's resulting in a dangerous rise of crime,
17 which recently made the news in the mainland.

18 Most of the people here have no pension, and if they
19 do, it has been drastically reduced. They live paycheck to
20 paycheck, which forces them to have a second job or take part
21 in an underground economy. Add to that the last nail to this
22 coffin, which is what COFINA will do by using the already high
23 sales tax, one of the highest in the USA, to pay bondholders
24 instead of what it was really meant for, and prolonging this
25 for 40 years, this will result in making it extremely hard to

1 make ends meet. And at the same time, will not help the
2 society, because it will now go directly to pay a debt.

3 The people that made this decision did so without
4 analyzing how this will corrode society and everyday boricuas,
5 because how can we do this to vital law enforcement, after
6 school programs, and basically anything needed to foster a
7 healthy community that is deserving of any human being.

8 We are all American citizens, and we deserve to
9 pursue happiness the same way that the citizens living in the
10 mainland do.

11 This agreement is an ineffective way to address an
12 issue that we all understand needs to be dealt with, but the
13 health of our society is paramount and needs to be secured
14 first. And only then can we establish measures to pay
15 bondholders.

16 I am here to ask you, please, please reconsider this
17 deal, as it only benefits the pockets of people who are not
18 vested in the island, who don't care about a fixed economy,
19 who don't care about the professionals trying to survive and
20 remain here on the island.

21 If this decision remains, I am sure that the end goal
22 is not restructuring our debt and helping us in the long run.
23 No. Let us not fool ourselves. The end goal, if this becomes
24 final, will be to make the exodus of Puerto Ricans to the
25 mainland skyrocket even more, and only the extremely well off

1 will remain.

2 Thank you. And I'll go back. Thank you.

3 THE COURT: Thank you, Ms. Rodriguez.

4 Is Jesuan Rodriguez here?

5 Luis Jose Torres Asencio? Please come forward.

6 MR. TORRES ASECIO: Good morning.

7 THE COURT: Good morning.

8 MR. TORRES ASECIO: My name is Luis Jose Torres
9 Asencio. I'm a clinical and constitutional law professor at
10 the Inter American University of Puerto Rico School of Law.
11 I'm here also as a member of the Citizens Commission
12 for the Comprehensive Audit of the Public Debt, a non-profit
13 organization created when the Government of Puerto Rico
14 unsurprisingly abdicated its responsibility to audit Puerto
15 Rico's bond issuances for the past five decades.

16 I speak today on behalf of this organization, but I
17 also speak from my own account, as a lawyer that represents
18 the increasing number of communities and individuals facing
19 evictions from their homes in Puerto Rico, and generally, as
20 one of the very few people in this courtroom that will have to
21 bear the consequences of the Adjustment Plan under
22 consideration.

23 I begin by asking this Court not to follow through
24 with this Adjustment Plan without allowing for a comprehensive
25 and independent audit of COFINA's debt to be completed, and

1 demanding that the government, or better yet an independent
2 stakeholder, vigorously litigate the consequences of said
3 institution's bond issuances.

4 No just result can come out of a process that
5 approves a debt adjustment plan without examining the legality
6 of the debt and without participation of those who will bear
7 its cost with what little they have left. If the Government
8 of Puerto Rico and the Fiscal Control Board have chosen to
9 renounce their obligations to protect the public interest and
10 guarantee any debt restructuring does not harm our vulnerable
11 communities and individuals, this Court should not follow
12 course.

13 Questions abound about the legality of the
14 transactions. Publicly available information reviewed by the
15 Citizens Commission reveals that COFINA was something of a
16 dummy public corporation, one that was completely controlled
17 by the GDB, did not have independent sources of revenue other
18 than a portion of a Commonwealth tax, and was used to directly
19 or indirectly finance Commonwealth operations, including
20 balancing the budget and paying for the made-up severance
21 packages of the tens of thousands of public employees
22 dismissed by Puerto Rico's Act Number Seven of 2009. Through
23 that system, we believe COFINA impermissibly evaded our
24 constitutional debt limit and violated our balanced budgets
25 clause, whose best interpretation does not allow bond

1 | issuances to be included as total revenues.

2 | While litigating these issues certainly carries risk,
3 | said risk is minimal given how small of a haircut these
4 | creditors are getting and how steep a debt sentence is being
5 | imposed on the residents of Puerto Rico.

6 | This Adjustment Plan robs us of our next 40 years,
7 | not to pay the few remaining individual bondholders that
8 | invested their savings in our government, but to pay companies
9 | that did not see Puerto Rico's bankruptcy and its post-Maria
10 | devastation as possibilities for humanitarian aid and relief,
11 | but rather as investment opportunities.

12 | Almost half of COFINA's debt is in the hands of 17
13 | investment companies, according to bond filings. Those
14 | bondholders who bought their credits for far less than what
15 | they're bound to receive from these plans are the only ones
16 | benefiting from this agreement.

17 | Condemning us to continue paying the sales and use
18 | tax, which disproportionately penalizes our poorest
19 | individuals, not to pay for public works or public services,
20 | but to pay off a potentially illegal and definitely
21 | illegitimate debt is not only demoralizing, it is an eviction
22 | notice for my clients and the thousands of people who face
23 | displacement from their homes because their budgets are not
24 | able to compensate for a tax that does nothing for them but
25 | takes everything from them, even their right to a decent roof.

1 In my case, I am privileged enough to, if need be,
2 pack my bags and move to a place that grants me a decent
3 living and is not constrained by the burden of an unpayable
4 public debt. But I don't want to do that. I want to stay and
5 survive and contribute what I can to my homeland, this
6 beautiful and sad colony that is being forced to restructure
7 its debts without any exploration of the role that the Federal
8 Government has played in its accumulation, a process akin to
9 repairing an old, broken down house by painting over its
10 cracks.

11 While approving this Plan of Adjustment will surely
12 test our resolve and seriously hamper our possibilities of
13 having a future in which we can live with dignity and basic
14 respect for our human rights, the residents of Puerto Rico
15 will surely endure. Our lives, or our permanence in this fair
16 archipelago will be at stake, but we will find ways to grow
17 and resist, until we have grown enough not to have to resist.

18 However, what is truly at risk is the legitimacy of
19 this proceeding and the idea that enough people will see it
20 fit to comply with whatever comes out of it. Our people are
21 not in this courtroom. They are outside, and they are
22 waiting. Thank you.

23 THE COURT: Thank you.

24 And finally, is Adriana Rodriguez Lazaro here?

25 COURTROOM DEPUTY: (Shaking head from side to side.)

1 THE COURT: I thank the members of the public who
2 have come and spoken directly from their hearts and minds and
3 have participated in these proceedings in this way. And as I
4 said yesterday, and as I have said in the notices of
5 correspondence that I have posted, I have read and continue to
6 read everything that has been sent to me as well.

7 Now we are returning to the lawyers' presentations.
8 We have a few minutes before the time for the lunch break, and
9 in the interest of us using this day as thoroughly as we can,
10 I will hear the first two statements in support. First, by
11 National.

12 Who's speaking for National?

13 Good morning, Ms. Goldstein.

14 MS. GOLDSTEIN: Good morning, Your Honor. I did not
15 realize I would have the first spot, so thank you.

16 Your Honor, Marcia Goldstein from Weil, Gotshal &
17 Manges, and we represent National Public Finance Guarantee
18 Corporation, which insures and owns a total of approximately
19 1.2 billion dollars of COFINA senior bonds.

20 As we've made clear to the Court before, and to those
21 we've negotiated with in this case, National is not only a
22 COFINA creditor, but also deeply invested across the island,
23 with additional exposures with respect to GO debt, PREPA debt,
24 HTA debt, and University of Puerto Rico debt. As such, we are
25 a long-term player, and we are necessarily concerned with the

1 long-term prospects of Puerto Rico.

2 In that context, National supports both the
3 COFINA-Commonwealth settlement, and primarily from a COFINA
4 perspective, and the COFINA Plan. As a Commonwealth creditor,
5 we also acknowledge the benefits of that settlement to the
6 Commonwealth, but we think it's also important with respect to
7 our COFINA debt.

8 From our -- you know, from our perspective, the
9 settlement is a very important milestone in a number of
10 respects, as is the COFINA Plan. This is an integral part of
11 the overall COFINA-Commonwealth resolution, and it provides
12 significant certainty to COFINA creditors by embodying a
13 settlement of the litigation which has created a cloud over
14 COFINA's rights with respect to SUT collection, and also
15 contemplates protection of the SUT attributable to COFINA,
16 hopefully by an Order of this Court approving the settlement
17 and the Plan.

18 I would point out that for National, as an insurer,
19 the protection of the COFINA ownership rights for a COFINA
20 creditor under the Plan is vital to us. While we don't insure
21 the new COFINA bonds, National will continue to bear economic
22 risk with respect to the performance of the new bonds.

23 The settlement that is embodied between the
24 Commonwealth and COFINA, I would note once before -- once is a
25 settlement of litigation that was before this Court. The

1 objectors made a number of arguments with respect to upholding
2 the sanctity of the COFINA structure.

3 There are many who would tell you that National was a
4 vigorous advocate of the sanctity of that structure. The
5 constitutional arguments were made on behalf of my client, and
6 also made on behalf of COFINA. And derivatively, on behalf of
7 all COFINA creditors, by the COFINA agent, which was
8 represented by experienced counsel. Those arguments were made
9 before this Court, and before this Court ruled, both sides,
10 the Commonwealth agent and the COFINA agent, decided that a
11 settlement was appropriate with respect to avoidance of risk
12 on both sides of the table.

13 I know you heard those arguments in connection with
14 the Commonwealth's motion, but they are equally applicable
15 with respect to the COFINA side of the settlement, which is to
16 be taken up in connection with this Plan of Reorganization.

17 And so I think that while I couldn't say National
18 disagreed necessarily with some of the arguments put forward
19 on behalf of the COFINA structure, we also felt it was
20 important to settle this case and bring some conclusion and
21 certainty to the payment on behalf of COFINA bondholders going
22 forward. And therefore, we urge the Court to approve that
23 settlement in the first instance.

24 But I think it is also significant that the Plan
25 represents a consensual resolution between senior and junior

1 COFINA bondholders and insurers. I mean, this is a settlement
2 of issues that was also coming to some head before this Court.

3 So I think that we should take note, not only that
4 that is a settlement that meets the standards for a
5 settlement, which I believe has been fully articulated in the
6 Oversight Board's filing. So I don't want to take up too much
7 more time, Your Honor.

8 Am I already there?

9 THE COURT: Actually, you're just over your time
10 limit, so if you will wrap up.

11 MS. GOLDSTEIN: I will wrap up. And I would
12 appreciate maybe just two extra minutes.

13 I think that, one, the overwhelming support of
14 creditors is demonstrated, and I know Mr. Rosen has already
15 made this point, by the votes in all classes, senior and
16 junior.

17 And I just wanted to conclude by saying that we do
18 appreciate all the hard work of the mediation parties, the
19 Oversight Board, the government parties, all the creditor
20 representatives, including junior representatives, and of
21 course the mediators, especially in bringing this plan to a
22 conclusion.

23 Again, I emphasize that this is a very important
24 milestone for Puerto Rico, and therefore, we submit that both
25 the COFINA-Commonwealth settlement and the COFINA Plan of

1 Adjustment should be approved. Hopefully, that will get us to
2 further rounds of negotiations with respect to the
3 Commonwealth.

4 Thank you, Your Honor.

5 THE COURT: Thank you, Ms. Goldstein.

6 And now Ambac has been allotted ten minutes. Mr.
7 Dunne.

8 MR. DUNNE: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. DUNNE: It is still morning. For the record,
11 Dennis Dunne from Milbank, Tweed, Hadley & McCloy on behalf of
12 Ambac.

13 Let me start by saying I think that there's a common
14 thread from almost every party that's stood up yesterday and
15 today. We were all hoping for greater results for, in our
16 case here, COFINA, and for our specific class of holdings.
17 Such hopes were unrealistic. And as Ms. Goldstein mentioned,
18 we proffered and argued, as Your Honor knows, in the summary
19 judgment motion, many of the arguments that you're hearing
20 now; but at the end of the day, all of us had a choice of
21 continuing the protracted, costly and binary litigation or
22 taking a mediated settlement that approximated the outcome of
23 a litigated solution.

24 I'll say it's not the solution I had originally in
25 mind when we started, but it was one that was possible. And

1 | when one became possible, and you look at something that had
2 | potential and it was executable, there was a real cost to
3 | continuing to litigate.

4 | And we decided with the other Plan support parties,
5 | it was the best available path, not because anybody was
6 | influencing a phenomenal outcome, but the alternatives with
7 | the incremental cost delaying uncertainty were worse, not just
8 | for the PSA counter-parties, but for everybody else in the
9 | case.

10 | We stand today to urge the Court to confirm the
11 | COFINA Plan of Adjustment, not because someone won or someone
12 | lost, but because the price of continued acrimony and
13 | contention is simply too high.

14 | Your Honor, I think there's also another thread here,
15 | which is when we are doing a retrospective review of a
16 | transaction that occurred six months ago, there is an air of
17 | inevitability about the outcome. Nothing could be further
18 | from the truth. It was the most difficult deal to come
19 | together in my career.

20 | A deal was never certain. There were scores of
21 | parties that were negotiating to dry value to one bucket, one
22 | pocket, one debtor, one class or another. Some held positions
23 | just in one class or just with respect to one debtor. Many
24 | held positions across a number of tranches or debtors. This
25 | led not to an easier or more identifiable path forward, but to

1 | chaos.

2 | At the outset, basically everybody had a different
3 | opinion as to not just where the settlement level should be,
4 | but what the structure should be, what the currency involved
5 | should be, and from my perspective, it's outstanding that a
6 | deal coalesced at all.

7 | Your Honor has heard testimony and comments from the
8 | Commonwealth Creditors wanting more of the SUT. The COFINA
9 | agent wanted more of the SUT for the COFINA house. The senior
10 | creditors and subordinated creditors each wanted more of what
11 | came into the COFINA house. All of that, Your Honor, I submit
12 | is evidence of the good faith, arm's length and hard fought
13 | nature of the negotiations, and the ultimate reasonableness.

14 | Let me talk quickly about some of the objections,
15 | particularly Mr. Eisenberg's and Mr. Hein's. They both start
16 | from a position that COFINA has a valid lien, that the holders
17 | have a valid lien on the SUT and COFINA, and that COFINA owns
18 | the SUT.

19 | Of course the whole issue here is whether that lien
20 | would be a lien on property that never gets into COFINA, and
21 | you would have an empty box. COFINA would have nothing in it
22 | if you lost the ownership.

23 | So the validity of a lien was really beside the
24 | point. It was really who owned the SUT at the end. And I'm
25 | going to walk through some of the risks, because it wasn't

1 just the ownership of the SUT, it was whether or not they
2 could constitute available resources.

3 And lastly, they had -- even if you prevailed, could
4 Puerto Rico sustain the debt that COFINA was bearing, and
5 would the government divert the dollars in any event? And all
6 of that comes back to this, Your Honor. Wherever we were,
7 whether we litigated the outcome or not, litigated and won, if
8 you have a Plan that is overwhelmingly accepted by every
9 class, that ends it.

10 That means that even as we -- as Mr. Eisenberg
11 suggested, that you had ownership of the SUT, but Puerto Rico
12 came around and said everyone needs to contribute to the
13 future prosperity and health of Puerto Rico, I need every
14 instrumentality to contribute something. And they go to the
15 creditors with this Plan and voted it up on the levels they
16 have today, that would have ended it as well, Your Honor.

17 But I want to address another thread, which is
18 somehow this notion of a deal embedded in the Plan of
19 Adjustment today was the product of some back-room negotiation
20 between interested and conflicted parties. Nothing could be
21 further from the truth, Your Honor.

22 And I just have to be clear here. We have to
23 separate the two steps that the juniors actually object to.
24 Step one is the split of the SUT between the Commonwealth and
25 COFINA. Step number two is the allocation of COFINA's value

1 between the seniors and the subs.

2 First off, all the negotiations occurred subject to
3 Orders that Your Honor entered after public notice. With
4 respect to the mediation, I believe it is on the docket, Judge
5 Houser's mediation protocol that had a set of required parties
6 and said anyone else who wants to participate, you're welcome,
7 sign the requisite confidentiality agreement. So nobody was
8 forbidden from participating.

9 With respect to the first half of that, on the
10 Commonwealth-COFINA settlement, that was negotiated, as we all
11 know, between two court-appointed fiduciaries. Bettina Whyte,
12 as the COFINA agent, and the Commonwealth agent. Neither one
13 of those agents held debt. There was no argument of conflict
14 that they were doing anything other than what they were
15 designed to do, which would be to be zealous champions for the
16 debtor that they were assigned to.

17 And second, the COFINA split between the seniors and
18 the subs was negotiated between the guidance and active
19 participation of the Court-appointed mediators. Each of those
20 mediators are sitting judges with impeccable reputations and
21 limitless energy. They became knowledgeable of the issues and
22 were not shy of sharing the risks associated with those
23 issues. They allowed anybody to participate, and they helped
24 guide us to the solution we have today. And I submit Your
25 Honor can take comfort from that.

1 Your Honor also heard a lot of argument at the
2 podium, testimony regarding the treatment of the subordinate
3 notes under the Plan, and whether there was anybody actually
4 negotiating for them, and that there's not really a default
5 out there, so they should be pari-passu.

6 As the testimony actually was quite clear on, there
7 has been a default. There's been a payment default since the
8 filing. The automatic stay prevents taking remedial action,
9 but with respect to the rights between the seniors and subs,
10 it's very relevant.

11 That payment default today means the subs face the
12 specter that there is a default that says seniors will be paid
13 in full first. And decades later, you'll start to get the
14 SUT. What's in the Plan today does much better for the subs.

15 One point that is conveniently or consistently
16 omitted is the acceptance by the sub -- subordinated class of
17 the Plan. When a settlement is embodied in a Plan, and the
18 classes on both sides of the settlement vote to accept, that
19 should end the issue, as Judge Gerber said in the *Adelphia*
20 case going back to 2007. Whereas here the settlement is in
21 the context of a Plan, I think it requires some material
22 consideration of the votes that were obtained on the Plan. If
23 the approval percentages are high, and many feel that the Plan
24 and settlement are worthy of approval, one must consider why a
25 Judge should feel otherwise. *Adelphia Communications*, 368

1 B.R. at 235, Bankruptcy Southern District of New York, 2007.

2 The other point I want to make is with respect to who
3 was representing the subordinate debt. As the testimony was
4 heard, there were a number of parties that either had
5 exclusive subordinate debt holdings or were weighted
6 predominantly to the subordinate debt class.

7 And even Mr. Elliott in his testimony said that he
8 had senior debt as well. So even if he was participating in
9 the mediation, he would be like many of the others that held
10 more than just one tranche of the debt.

11 But my favorite attempt to marginalize an unfortunate
12 fact, I think relates to Assured. Their role in the
13 negotiations is inconvenient, counter factual to the argument
14 that there was no one in the room with a pure subordinate hat
15 on. Why? Because they argued that they also had -- they
16 wrapped GO bonds.

17 But that's not what we're talking about right now.
18 The GO bonds would be relevant potentially to the split of the
19 SUT between the Commonwealth and COFINA. Once that
20 happened -- and this is the sequence in which it actually
21 happened. That happened first, and then COFINA knew what
22 percentage of the SUTs they had inside the COFINA house, and
23 Assured was in the room negotiating that.

24 There is no basis to conclude that their economic
25 interest within the COFINA negotiations was to do anything

1 more than drive the most possible value to the subordinated
2 class.

3 Your Honor, one last comment in my 20 seconds about
4 the release. They challenged the good faith findings. We
5 think there's enough evidence for you to make the good faith
6 findings, but it's basically linked with the release, the
7 exculpation for the party's conduct in connection with the
8 negotiation of the Plan.

9 It is a proper objection to say the Plan shouldn't be
10 confirmed for a lack of good faith. We think it will fail for
11 that. But if Your Honor said I'm not confirming it for a
12 lack of good faith, then there's no release granted because
13 the release is in the same Order.

14 If Your Honor does find that the parties acted in
15 good faith, then the release is appropriate. And what should
16 not happen is the ability for parties to relitigate the actual
17 issue and the actual finding that Your Honor made a connection
18 with the parties' conduct before Your Honor, before the
19 mediators in connection with the Plan.

20 With that, Your Honor, we submit that the Plan of
21 Adjustment should be confirmed.

22 THE COURT: Thank you, Mr. Dunne.

23 All right. When we come back from the lunch break, I
24 will hear from the Senior Bondholders Coalition, AAFAF, and
25 from the debtor. And then if the BNY Mellon, Whitebox, and

1 I'm sorry, I am -- the other party involved in that motion
2 practice, please excuse me for that, Ambac, wish to go forward
3 with the hearing on that motion, we will follow on from there.

4 And so with that, I wish you all a good lunch, and
5 productive activities over that time if you're engaging in
6 activities other than eating. And let's all be back here at
7 one o'clock. It's a slightly shorter lunch break. Forty
8 minutes.

9 Thank you all. We're adjourned.

10 (At 12:10 PM, recess taken.)

11 (At 1:07 PM, proceedings reconvened.)

12 THE COURT: Just a moment, Mr. Kirpalani. I just
13 have to get myself together here.

14 And so we continue the statements in support with
15 Mr. Kirpalani for the Senior Bondholders Coalition.

16 MR. KIRPALANI: Thank you, Your Honor, and good
17 afternoon. Susheel Kirpalani of Quinn Emanuel on behalf of
18 the COFINA Senior Bondholders Coalition.

19 Your Honor, after yesterday's testimony, I was
20 checking my calendar to look back and figure out when exactly
21 did our group start, and I think we've been working together
22 literally every day for the last 1,300 days. And as the
23 person who, over that period, seemingly found new ways each
24 week to disappoint people, I do understand that a lot of the
25 people here, frankly, are still unhappy.

1 And I don't want to make light of it, but this is not
2 uncommon in bankruptcy cases. And the seriousness of the
3 issues here transcend any ordinary bankruptcy case.

4 But there are so many people besides creditors who
5 worked for years trying to forge compromises that would get us
6 to a truly consensual Plan --

7 THE COURT: Just one moment. We have audio problems
8 in New York, so we'll have to start again when we get that
9 straightened out.

10 It may take a few more minutes because it needs to be
11 checked. So --

12 COURTROOM DEPUTY: I don't know how close Pablo is,
13 but it could be a couple minutes.

14 THE COURT: So if you want to rest your feet, you
15 can, or you can stand there.

16 MR. KIRPALANI: If I'm not offending anyone, I'll
17 just stand here.

18 THE COURT: It works for me. Thank you.

19 Mr. Hein, would you wave your hand if you can hear?
20 All right. Thank you, Mr. Hein. We are back online with New
21 York.

22 So Mr. Kirpalani, would you start again, please?

23 MR. KIRPALANI: Sure. Your Honor, I was just
24 mentioning that this process has gone on for a very long time.
25 And I know some people are very unhappy, and I don't want to

1 make light of it. This case is very serious.

2 And although it's not uncommon in bankruptcy cases
3 for folks to walk away disappointed, the seriousness of the
4 issues affecting the people of Puerto Rico really transcend
5 any ordinary bankruptcy case. And this is not just not about
6 creditors and debtors.

7 There are so many people besides creditors who've
8 worked for years trying to forge compromises and avoid all or
9 nothing litigation results. Their hope was to get to a truly
10 consensual Plan. And they really did do it, and they deserve
11 honorable mention.

12 I need to single out Chief Judge Houser, Judge Atlas,
13 Judge Ambro. Others have mentioned them, but they were truly
14 the source of strength throughout the Title III case when many
15 people, including myself, wanted to throw in the towel and
16 just litigate.

17 There is the Official Committee of Unsecured
18 Creditors of the Commonwealth, and its capacity as the
19 Commonwealth agent, where it was a fiduciary for the
20 Commonwealth, and for no other party.

21 The Retiree Committee of the Commonwealth, who was
22 one of the original consent parties under the
23 Commonwealth-COFINA protocol. From the Commonwealth side,
24 they are now on board with the settlement.

25 The GO representative, our highly respected adversary

1 who represented the GO bondholders who started this all with
2 the Lex Claims lawsuit, but ultimately issued a very welcome
3 "no objection" yesterday.

4 The COFINA agent, a veteran restructuring
5 professional who's an expert in securitizations and some of
6 the most complicated transactions ever engineered by
7 financiers in America.

8 I also need to express my gratitude for the
9 government officials and their advisors, both at the Board
10 level and at the elected Government level. They have had to
11 work nonstop through the complexities of the largest municipal
12 bankruptcy in history, with the largest litigation machine
13 previously unknown to man or woman.

14 Despite what the objectors here may feel, in our
15 view, those officials always did what was in the best interest
16 of the citizens of Puerto Rico. And that's a much more
17 complicated question than just how much of COFINA's money did
18 they recapture.

19 These officials are also looking forward to the
20 bright future of Puerto Rico, where it won't have an Oversight
21 Board anymore. But in order to do that, they have to restore
22 credibility with creditors. The good faith of the
23 participants in formulating a Plan cannot fairly be
24 challenged, and there is not a scintilla of evidence that
25 actually does that.

1 Some concerns have been expressed by Commonwealth
2 creditors that they don't know how this will all end.

3 Is there a problem with the sound again? I'm just
4 wondering --

5 THE COURT: Ms. Ng?

6 MS. Ng: No. There was just a problem with the feed
7 to the podium. We couldn't see.

8 THE COURT: All right. So is everything sufficiently
9 in place that we can continue?

10 MS. Ng: Yes.

11 THE COURT: All right.

12 MR. KIRPALANI: I think I pretty much look the same
13 as I did yesterday anyway, but okay.

14 Some concerns have been expressed by the Commonwealth
15 creditors that they don't know how is this all going to end.
16 And we can't evaluate the COFINA Plan without knowing the rest
17 of the Commonwealth plan for paying its creditors and
18 providing for essential services.

19 And the best I can say about that is maybe we can
20 learn from children how they solve big problems. My son loves
21 jigsaw puzzles. I'm pretty bad at them. But when he was
22 seven, he told me the reason why I'm so bad at them is because
23 I always try to solve the whole thing at once.

24 And he said, you need to start with a border, and if
25 not, you're just never going to finish it. And I think that's

1 | what the Oversight Board did here, and it's the only way the
2 | puzzle was going to be solved.

3 | Mr. Rosen is going to cover the statutory bases for
4 | confirmation, but you had asked at the outset some questions
5 | about the proposed findings of fact and conclusions of law
6 | that are really critical to the new COFINA bondholders and the
7 | viability of the new COFINA structure. So I'm going to try to
8 | address them.

9 | Specifically, Your Honor asked about paragraphs 119,
10 | 124, and 170. We didn't mention there was also a summary of
11 | those important determinations in paragraph one of the
12 | Confirmation Order.

13 | THE COURT: I did mention 1(B) of the Order.

14 | MR. KIRPALANI: Okay. Thank you, then. I missed it.

15 | So I think that you're asking then essentially about
16 | three things that I want to try to cover. The first is the
17 | Court's ability to determine that the new COFINA bond
18 | legislation is valid.

19 | The second is the Court's ability to quiet title to
20 | COFINA's property for all time, so we know that COFINA
21 | bondholders didn't give up their property rights in a
22 | settlement only for the validity of the bonds and the finality
23 | of the settlement to be attacked years from now.

24 | The first is actually a question of state law, and
25 | the second is a mixed question of federal and state law as to

1 which the Supremacy Clause applies.

2 So the validity of the new legislation. Your Honor,
3 the laws of Puerto Rico are presumed constitutional unless
4 otherwise determined by the Court. I can give you two
5 citations for that, both from the Supreme Court of Puerto
6 Rico. The first is *Brau*, B-r-a-u, *Linares*, L-i-n-a-r-e-s,
7 *versus ELA*. The cite is 2014 TSPR 26; also at 190 DPR 315, at
8 337. And the Westlaw cite is 2014 WL 997526. It's the
9 Supreme Court of Puerto Rico from 2014.

10 The second Supreme Court of Puerto Rico case cite is
11 *PSP against ELA*, 107 DPR 590. And there's an official
12 translation of that one at 7PR, official translations, 653727.
13 And it's available at Westlaw at 1978 WL 48833. And that's
14 from 1978.

15 In that case, in the translated version, which I
16 believe it was modified and the official translation is at
17 1988 WL 580845 from 1988, quote, to begin with, laws are
18 presumed to be constitutional and the movant should place the
19 courts in a position to decide by introducing evidence to
20 sustain the facts alleged and then stating the legal arguments
21 on which its assignment of unconstitutionality is based --
22 unconstitutionality is based, specifically mentioning the
23 constitutional provisions involved and the legal precedence
24 supporting its assignment, end quote.

25 Given the presumption of the validity, it's incumbent

1 on the objectors to come forward with that evidence. The
2 objectors have not met the burden to rebut the presumption.

3 The COFINA restructuring legislation, also known as
4 the new bond legislation, was filed before the Puerto Rico
5 legislature. It was debated in both chambers. It was passed
6 by the House and by the Senate. The secretaries of both
7 chambers certified the valid approval of the law and the
8 Governor signed it into law.

9 Proposed finding of fact paragraph three provides,
10 the Court to take judicial notice of the new law. And Mr.
11 Friedman, on behalf of AAFAF, will further ensure the Court
12 has whatever Your Honor needs in terms of anything you need
13 from the state system.

14 The Natal Albelo objection, Your Honor, we addressed
15 it in our papers. Essentially, the legislative assembly House
16 member argued that he filed a litigation in state court.

17 In paragraph 49 of our Reply papers, there are three
18 reasons why his objection should be overruled. First, the
19 lawsuit itself is void ab initio as a violation of the stay.
20 We cite *Jefferson County* and *Detroit* for that in our briefs.

21 Second, claims about constitutionality of COFINA's
22 creation has already been the focal point of the litigation
23 with parties who have actual standing in the correct legal
24 forum, which was here. Those parties, with consent of the
25 Board and AAFAF, chose to settle the matter rather than roll

1 the dice and its consequences.

2 Third, the allegations of representative Natal Albelo
3 is nothing more than an internal procedural dispute among
4 legislators. This type of dispute is not judicial. We cited
5 *Noriega Rodriguez against Jarabo*, 136 DPR 497, Supreme Court
6 of Puerto Rico, 1994.

7 On Monday of this week, we filed an official
8 transcript of that case. It's at ECF cite for the
9 Commonwealth, 4762-1, and in the COFINA case, 488-1.

10 So let me shift gears, while I have some time left,
11 to what's really critical for the bondholders. That's the
12 support from the findings of fact and the summary for those
13 findings in paragraph 1(B) of the confirmation Order.

14 This concerns the Court's determination of validity
15 for all of the bonds. The bonds will be stamped as such. The
16 stamping itself is something that comes out of the *Jefferson*
17 *County* precedent. It was important there for the new
18 bondholders, and that was where the idea of stamping the new
19 bonds came from. So on the substance --

20 THE COURT: Validity is a legal determination.

21 MR. KIRPALANI: It is a legal determination that this
22 Court is being asked to make.

23 THE COURT: You referred to it as a finding of fact,
24 so I just wanted to be clear on that. I need to engage the
25 legal basis of the statement that something is valid.

1 MR. KIRPALANI: Absolutely right. It is a legal
2 determination, Your Honor. And I do believe that the form
3 findings of fact, the conclusion of law, if one is listed in
4 the wrong category, it will be deemed in the right category,
5 but there is no reason not to get it precise.

6 Let's talk about PROMESA and the authority vested in
7 this Court by Congress. First, under PROMESA Section 4, it
8 was enacted pursuant to the Territories Clause and overrides
9 all contrary state or territory law. That's what Section 4
10 says. And I quote, the provisions of this Act shall prevail
11 over any general or specific state law or regulation that is
12 inconsistent with this Act.

13 Bankruptcy laws and PROMESA's bankruptcy provisions,
14 too, are in large part an in-rem proceeding. Under Section
15 306(b) of PROMESA, this Court, and only this Court, has
16 exclusive jurisdiction over all property of the Commonwealth
17 and COFINA once they commence their cases.

18 As such, you have the judicial power conferred by
19 Congress to determine who is the owner of the property, and
20 you have the power to quiet title to that property. This
21 happens all the time under the Bankruptcy Code and under
22 bankruptcy plans. In fact, it is fundamental to achieving
23 finality and res judicata effect on all issues that were
24 raised or that could have been raised in an umbrella
25 bankruptcy case, which is what bankruptcy is, and it's what

1 the Plan asks the Court to do.

2 Section 944, which Your Honor mentioned this morning,
3 is the effect of the discharge provisions. It was enacted
4 specifically to remove doubts concerning the validity of the
5 bonds issued by a municipality.

6 That section is specifically incorporated into
7 PROMESA under Section 301(a.) On page seven, footnote seven
8 of our Reply brief, we cited Collier on Bankruptcy, and I
9 quote, the requirement of a court determination of validity is
10 extra assurance for those who might be skittish about the
11 nature of the bonds being issued. It has the added feature of
12 removing any doubt concerning the matter because the
13 determination of the Court on that issue should be binding in
14 the future, end quote. That's Six, Collier of Bankruptcy,
15 Section 994.03, subsection 1(B), as in boy.

16 Now, as the Court is aware, there's the potential of
17 limitation of Federal Bankruptcy Law in Section 305 of
18 PROMESA. It says, the Court cannot interfere with the
19 political or governmental powers of the debtor, or any
20 property or revenues of the debtor, or the use and enjoyment
21 by the debtor of any income producing property. Well, that's
22 the sales tax, right?

23 There's an important exception built right into
24 Section 305. It says, quote, unless the Oversight Board
25 consents or the Plan so provides. And the reason for that is

1 obvious, because without it, Puerto Rico can never use the
2 bankruptcy laws because title to property will never be
3 settled. And without that and the determinations in 944,
4 COFINA and the Commonwealth will never get the discharge or
5 the release that's integral to the Plan.

6 So we are here now to confirm the Plan in which the
7 Oversight Board expressly consented to the allocation of
8 property and future revenues as between two debtors in which
9 this Court exercises exclusive in-rem jurisdiction.

10 The elected bodies of Puerto Rico have also consented
11 to the settlement and the Plan, so there's nothing that will
12 be standing in the way of the Court exercising its
13 jurisdiction, and that exercise is required under 944(e)(3)(b)
14 in order to get the debtors their discharge.

15 So how do we know, as a matter of law, that this
16 Court has the legal authority to make the determinations
17 requested? There's at least three reasons.

18 First, the Commonwealth, through its adversary
19 proceeding filed by its duly authorized agent, is an actual
20 disputed creditor of COFINA. And under Section 944(a), the
21 Plan is binding on all creditors, whether it's the state of
22 New York or the state of Puerto Rico. And that certainly
23 includes the Commonwealth.

24 Second, we have the separate 9019 Order, which if
25 entered, will bind the Commonwealth by the final settlement of

1 its property entitlements versus COFINA, which the Oversight
2 Board consented to, and even the elected government consented
3 to.

4 And most fundamentally is the question of the Federal
5 Court's power to determine the competing property rights of
6 the Commonwealth versus COFINA. I'm running short on time, so
7 let me just wrap up.

8 THE COURT: Well, you are responding to my question,
9 so please give your full response.

10 MR. KIRPALANI: Thank you, Your Honor.

11 So third, in terms of judicial power, Your Honor may
12 recall that in the adversary proceeding, the COFINA agent and
13 virtually all of the COFINA creditors, including us,
14 specifically asked to have the Supreme Court of Puerto Rico
15 determine the issues of which debtor owns the property,
16 whether the COFINA legislation is constitutional, whether --
17 if the Commonwealth still owns it, whether it's available
18 resources or available revenues, including which language
19 needs to be employed, because we thought, or we were fearful
20 that these may be considered pure state law issues.

21 The Oversight Board fought us on that, as did all of
22 the Commonwealth side litigants. They cited appellant cases,
23 including from the First Circuit. They cited *Abboud, et al.*,
24 *versus The Ground Round*, 482 F3d at page -- F3d 15, at page
25 17, First Circuit, 2007. And the quote from the First Circuit

1 is, the label that state law affixes to a particular interest
2 in certain context is not always dispositive, end quote.

3 And what was the context there? Federal bankruptcy.
4 The First Circuit was citing *In Re: Nejberger*, which was the
5 Third Circuit's case from 1991, 934 F2d 1300, jump cite 1302,
6 for the same proposition. That's law of the case.

7 The Court has already held that the issues being
8 litigated were mixed questions of federal and state law. And
9 as such, the Court has proper jurisdiction over the dispute.
10 No one, not even us, appealed from that ruling.

11 Your Honor's decision is docket 483 in the adversary
12 proceeding, 17-00257, entered on May 24, 2018.

13 THE COURT: Can I properly hear you as saying, not
14 only that there's a general principle established as law of
15 the case here that the question of ownership is at least at
16 some level a mixed -- a federal one, as well as a state one,
17 but that PROMESA Section 4 and negotiated Plan terms
18 essentially empower me to make PROMESA federal common law and
19 establish that; and then say something is valid because it has
20 been made pursuant to a law that I have put in place by virtue
21 of endorsing a negotiated resolution?

22 MR. KIRPALANI: So I think there's two or three
23 different ways to support the proposition that the Court has
24 exclusive jurisdiction to determine the property of COFINA
25 verses the Commonwealth.

1 The first is, is it, once the debtors filed for
2 bankruptcy, a mixed question of federal and state law. That's
3 what I said was law of the case. At page three of the
4 decision of Your Honor, you noted that parties contend, and
5 you're referring to the Commonwealth side parties, that
6 property law concepts inherent in Federal Bankruptcy Law are
7 relevant to and ultimately dispositive of the question of
8 whether the pledged sales taxes are the property of the
9 Commonwealth or COFINA in their -- in the context of their
10 prospective PROMESA Title III proceedings, regardless of how
11 the Supreme Court of Puerto Rico may rule on the related
12 questions of Puerto Rico law, end quote. That was on page
13 three of the decision.

14 Your Honor reasoned at page five, and again, I'm
15 quoting from the decision, the Court must decide what the
16 relevant property rights are within the context of these Title
17 III proceedings under PROMESA and Federal Bankruptcy Law
18 conditions that Congress has incorporated into PROMESA. And
19 accordingly, at page six of the decision, the Court held the
20 issues being litigated were mixed questions of federal and
21 Puerto Rico law.

22 So first, it is law of the case. Secondly, I don't
23 know if it would be considered federal common law. It would
24 be considered federal statutory law, however. There are
25 provisions in PROMESA that specifically provide that the

1 Oversight Board, in formulating a fiscal plan, determines
2 which assets are in which debtor entity.

3 We've heard a lot about the Court's ability to review
4 the Board's determinations of fiscal plans at various periods
5 of time in the case. This is the time. It is the plan being
6 confirmed that incorporates the fiscal plan, where the Court
7 has to determine whether it's consistent with the Oversight
8 Board's Fiscal Plan for COFINA, which does allocate and
9 earmark these specific revenues to the COFINA estate.

10 So if the Court has jurisdiction over that Board
11 determination, it would have it now. If it doesn't have
12 jurisdiction over that issue, the Board's determination, then
13 Congress said the Board will have discretion to determine it,
14 which they have done.

15 So whether it's -- I don't know if you would call it
16 common law. It's in the Statute, how it's being determined.
17 But it's either federal common law or it's interwoven within
18 the statutory determinations that are within the congressional
19 authority assigned to the Board as a creature of the Puerto
20 Rico Government to determine state law.

21 THE COURT: And is it the Board's interpretation, and
22 I'm thinking now specifically of the debt limit and maturity
23 limit provisions that I'm -- or determinations that I'm asked
24 to adopt. Is that an exercise of recognition of a Board power
25 to determine what the Constitution of Puerto Rico means, or

1 does that somehow come into the mix of traditional
2 property-related concepts that inform the application of
3 bankruptcy laws as we had talked about in connection with
4 *Ground Round* and other cases, because it doesn't seem to me to
5 fit neatly into either of those processes.

6 MR. KIRPALANI: It is the latter. It is the mixed
7 question that is being asked to be determined, because of the
8 jurisdiction over all property that was expressly granted to
9 the Court by Congress pursuant to the Territories Clause.

10 THE COURT: And is there anything in previously
11 established and recognized general principles of property law
12 that would directly inform the Court's, either determination
13 that this ruling is consistent with the Puerto Rico
14 Constitution, or allow the Court to write a new constitutional
15 provision for Puerto Rico that specifically accepts the new
16 COFINA bonds in a way that it might not have accepted the
17 existing COFINA bonds?

18 MR. KIRPALANI: I think it's -- of course, the
19 Court's not rewriting any Constitutions of the states. I
20 think what it is, however, is that the Court is being asked to
21 determine the constitutionality of the law.

22 We've covered that question -- that specific question
23 is a question of state law, and it's presumptively valid. And
24 the objectors have not met their burden to rebut that
25 presumption. That's issue one.

1 Issue two is where is the Court's power to say that
2 not withstanding what happens in the future, this property
3 will always belong to COFINA. That is the Supremacy Clause.
4 That is Section 4 of PROMESA that gives Your Honor that
5 determination.

6 And there is similar case law in Chapter 11 and other
7 contexts, merely by question of determining property of the
8 estate in Section 541. I didn't go there, because Section 541
9 doesn't apply in PROMESA.

10 So what we do have is the expressed Congressional
11 grant and jurisdiction over all property, as well as the
12 provisions of PROMESA that confer authority on the Board to
13 determine which silos hold which assets.

14 That's what the Board has done here and this is the
15 opportunity, and frankly the only opportunity, for the Court
16 to determine whether that is, in fact, valid or whether it is
17 an integral part of the Plan. We submit, as COFINA
18 bondholders, it's absolutely integral. Otherwise, we don't
19 know what we're getting.

20 In exchange, some of the juniors bondholders have
21 raised that objection. We think they're wrong as a matter of
22 law, but it's critical that the record reflects that.

23 THE COURT: Thank you.

24 MR. KIRPALANI: Thank you, Your Honor.

25 MR. FRIEDMAN: Good afternoon, Your Honor. Peter

1 Friedman from O'Melveny and Myers for AAFAF.

2 One other point I wanted to make is with respect to
3 constitutional obligations on tenure and length of debt. We
4 don't think it would apply here, because it doesn't apply to
5 debt issued by the government. But here property has been
6 transferred. And Mr. Kirpalani is right, the proposed Order
7 doesn't intend to quiet title of the SUT, the portion of the
8 SUT that's going to COFINA. So we don't think it's even
9 applicable with some of the issues of length that have been
10 raised.

11 Your Honor, I want to -- like I said, if it's helpful
12 to note --

13 THE COURT: And are you saying that that argument is
14 different from the argument that was made on the Commonwealth
15 side in 257, as to the nature of the property --

16 MR. FRIEDMAN: Yes.

17 THE COURT: -- as distinguished from --

18 MR. FRIEDMAN: Yes.

19 THE COURT: Okay.

20 MR. FRIEDMAN: Your Honor, in a Schoolhouse Rock
21 version of one of issues of what --

22 THE COURT: I want to hear you say, I'm just a
23 bill.

24 MR. FRIEDMAN: On Capitol Hill.

25 So, Your Honor, Act 8 of 2 LPR, Sections 186 and 188

1 to 189, established that the Secretary of State of Puerto Rico
2 shall promulgate laws by stamping the great seal of the
3 Commonwealth as soon as bills are signed by the Governor. And
4 then they're put online at the Office of Legislative Services.

5 I know we say in the Order, or the Board says in the
6 Order, you can take judicial notice, but I'm going to give a
7 citation to a Government-run website, and if it's too long, I
8 can later submit an informative motion --

9 THE COURT: I'm asking you now to follow up with that
10 informative motion.

11 MR. FRIEDMAN: Okay. Great.

12 So, Your Honor, if you look at the objections filed
13 by Mr. Eisenberg's party, they say, in paragraph 39, that the
14 Oversight Board expects subordinate holders to accept a 56
15 percent recovery. The Board and Government seem to be out of
16 touch with reality. It's just not true, Your Honor. And we
17 know that because of the evidence submitted in this case.

18 If you look at the Pullo Declaration and combine the
19 classes of junior and subordinate bondholders in classes five,
20 six and seven, you will see that 9,267 bondholders voted in
21 favor of the Plan, and 1,826 voted against.

22 People voted overwhelmingly with their ballots and
23 their wallets to accept the offer on the table as fair to
24 junior creditors. And, you know, the consequences of such
25 overwhelming acceptance is, cramdown issues aside, class-based

1 issues of unfair discrimination don't exist under the
2 Bankruptcy Code, and I think that's highly salient.

3 Your Honor, you heard live testimony from two
4 witnesses yesterday, one that I believe is quite credible, and
5 one for which I think there are some questions about. But
6 what's equally important is what you did not hear, which is
7 the cross-examination of David Brownstein.

8 And if you look at the Brownstein Declaration, his
9 testimony is unrebutted on three critical points. First is
10 that all parties were represented in connection with
11 discussions regarding settlement. And, in fact, it literally
12 says, all major claims, classes of claims, were represented in
13 Plan negotiations. Unrebutted testimony, not cross-examined.

14 And the second two important points in
15 Mr. Brownstein's Declaration, unrebutted, are, first, that he
16 lays out the rationale for why the intercreditor class
17 settlement, which is accepted by so many junior creditors, is
18 fair and makes sense given the economic and legal realities of
19 the case. No evidence to the contrary.

20 The third point, Your Honor, is Mr. Brownstein
21 explains why there isn't discrimination. There's differential
22 treatment, but that differential treatment is actually quite
23 helpful across the Board.

24 So all of Mr. Hein's arguments which rely on some
25 purported notion of legal discrimination that's unfair or

1 inappropriate shouldn't even get out of the starting gate,
2 because there's a quantum of evidence that shows the premise
3 is wrong as a factual matter. And that hasn't been
4 challenged.

5 Your Honor, there was also an argument raised about
6 whether the mediation process was fair. Mr. Dunne made
7 reference to obviously the Mediation Panel's June 12 Order. I
8 think he left out, actually, the best part, which is you heard
9 testimony from people yesterday and argument that they didn't
10 know how to get in touch with the mediators, even though they
11 followed the case very carefully.

12 But if you look at the -- I think it's docket 560, at
13 the very bottom, it actually has Matthew Hindman's e-mail
14 address. Mr. Hindman is the clerk to the Mediation Panel. So
15 it's just not a real argument to say people couldn't get in
16 touch with the Mediation Panel if they really wanted to
17 participate.

18 And of course there was an interpleader, which, by
19 its nature, is open to anybody who has an interest in
20 property. The objectors didn't show up there.

21 There was an adversary proceeding, as we announced,
22 in the First Circuit, and someone could intervene in it. The
23 objectors didn't show up there. And, for example, when
24 parties argued, particularly when Mr. Despins and Ms. Whyte
25 reached the preliminary settlement, parties like AAFAF said,

1 | you know, we'd like a chance to evaluate public filings and
2 | we'd like a chance to evaluate things, and so should everybody
3 | else have the opportunity, including bondholders.

4 | No response from objectors at the time that we can
5 | see, at least in certain terms of record evidence of reaching
6 | out of to the mediators or other parties.

7 | Your Honor, another issue that was addressed was best
8 | interest, by Mr. Hein. And what I would say in respect to
9 | that is effectively what his argument, I think, misses is that
10 | the best interest here is simply a replica of what happened in
11 | this Court.

12 | There's no reason to assume or speculate that there
13 | would be a different outcome than the one negotiated outside
14 | of PROMESA than there was under PROMESA in the Title III, and
15 | the creditors would do any better outside of the Title III
16 | process.

17 | Now, we happen to think that the best interest test
18 | is actually all creditor based as opposed to any single
19 | creditor. But under either scenario, I don't think Mr. Hein
20 | has an argument for best interest.

21 | Your Honor, turning now to why AAFAF particularly
22 | supports this deal, I don't have any soaring rhetoric as to
23 | this, but I think it's worth quoting the German philosopher,
24 | Max Webber, who said, governance is a strong and slow boring
25 | of hard boards. And that's really what happened here.

1 The government worked exceptionally hard to get this
2 deal done. It started with AAFAF entering into a PSA. The
3 legislature took the appropriate steps after notice to pass a
4 bill, which the Governor signed.

5 As in GDB, you have all parties working together, and
6 then the Governor, having to consult with parties, appointed
7 three independent, nonpartisan members of the new COFINA board
8 in a great show of excellent corporate governance going
9 forward, that's part of a planned biography of those
10 individuals.

11 One other point I think is worth raising with respect
12 to the issue raised by the various creditors regarding the
13 debt -- regarding public speakers regarding the debt audit.
14 And I think there are a couple of points. The first, Your
15 Honor, is that the litigation here fundamentally was a debt
16 audit.

17 You had the Commonwealth Agent, paid for by the
18 people of Puerto Rico, examining in extreme detail the
19 validity of the COFINA issuances, multiple summary judgment
20 motions, extensive litigation over it. That's a proxy for a
21 debt audit.

22 And then as this Court knows from the Kobre & Kim
23 report, which has been detailed endlessly in front of Judge
24 Dein, the Commonwealth has worked hand in hand with Kobre &
25 Kim and the Oversight Board, which issued a 535 page report, I

1 believe, and acknowledged the cooperation with the government,
2 worked closely with the government. And there's already been
3 output as to that, as the Court knows, from the objection
4 filed earlier this week.

5 So the debt audit is essentially being effectuated
6 through other means. The last thing Puerto Rico needs to do
7 is spend more money on a different debt audit when the full
8 goal is being accomplished.

9 I don't have anything else, Your Honor, other than
10 appreciation for the Court's time. Thank you.

11 THE COURT: Thank you, Mr. Friedman.

12 MR. ROSEN: Your Honor, Brian Rosen, Proskauer Rose.

13 With the Court's indulgence, Mr. Mark Ellenberg, who
14 is in the New York courtroom and represents Assured, has asked
15 if he could speak for five minutes in support because of the
16 allegations that have been made with respect to Assured and
17 its involvement in the mediation process.

18 THE COURT: That's fine. And so are you asking for
19 an additional five minutes to be allocated for Mr. Ellenberg?
20 Because I imagine you'll want to use at least the amount of
21 time that the printed table allocates to you.

22 MR. ROSEN: Your Honor, actually, you offered me ten
23 minutes and I'm actually going to yield one of my minutes to
24 Mr. Feldman as well. And I will stick with nine as well.

25 So yes, it's five in addition to the ten, Your Honor,

1 or five in addition to the minutes that were for the support
2 parties.

3 THE COURT: All right. I will permit that.

4 MR. ROSEN: Thank you, Your Honor.

5 THE COURT: Thank you.

6 So Mr. Ellenberg, good afternoon.

7 MR. ELLENBERG: Good afternoon. May it please the
8 Court. Mark Ellenberg on behalf of Assured Guaranty.

9 Your Honor, Assured has insured over five billion
10 dollars of Puerto Rico bonds. Those bonds are scattered
11 throughout the debt structure, but it includes a substantial
12 amount of junior COFINA bonds.

13 That five billion dollar exposure, Your Honor, is the
14 largest of any monoline insurer in this case, and it may well,
15 in fact, make us the largest single creditor of Puerto Rico.
16 As such, Your Honor, we have a long term and indeed profound
17 interest in the success of Puerto Rico.

18 Our contracts require us to pay these bonds when they
19 come due, both principal and interest. So 20 years from now,
20 30 years from now, 40 years from now, we will still be here
21 meeting our contractual obligations.

22 And thus, in fact, we have made a five billion dollar
23 investment in Puerto Rico's long-term success. And when we
24 support the 9019 motion before the Court, and this Plan, we
25 certainly believe that both of those are consistent with that

1 long-term success.

2 Your Honor, as I mentioned, we insured COFINA
3 juniors. We do not insure any COFINA seniors.

4 As Mr. Dunne mentioned, there are two distinct phases
5 to the settlement before the Court. The first was agreed to
6 by the agents, and that was a split between the COFINA estate
7 and the Commonwealth estate. The agents were expressly
8 authorized to negotiate that settlement by a protocol so
9 Ordered by this Court. And in so doing, they were taking the
10 mantel of the authority given to each of the principals, the
11 COFINA estate and the Commonwealth estate under the Bankruptcy
12 Code.

13 Because the Bankruptcy Code takes all common claims
14 of creditors and gives them to the debtors, and permits the
15 debtors to settle them under bankruptcy law, and that includes
16 the constitutional claims mentioned by Mr. Hein, the
17 Bankruptcy Code routinely permits those to be settled by a
18 debtor in a way that's binding on all creditors. And indeed,
19 that's just under 9019. You don't even need to confirm a Plan
20 to do that.

21 So the first phase of the negotiation, Your Honor,
22 was the basic split between the two estates. That was by the
23 agents. Assured, nor any other bondholder, played any part of
24 that.

25 Phase Two is the intraCOFINA negotiation. That was

1 entirely between the senior COFINA creditors and the junior
2 COFINA creditors. That is when Assured became involved, as
3 witnesses mentioned in their testimony yesterday.

4 At that point, our GO interests were not relevant.
5 The split was already a done deal. We had to deal with that
6 as a fact on the ground. What we then did was try to argue
7 for the greatest recovery for the juniors that we could
8 achieve.

9 Would we have liked to have achieved more? Yes.
10 Certainly. But we believed we did the best that we could.

11 Finally, Your Honor, I would just like to address the
12 validity issue that has been raised. And while I agree with
13 most of what Mr. Kirpalani said, I think really that the
14 validity issue is inherent in the settlement.

15 If Your Honor has the authority to approve the
16 settlement, then you necessarily have the authority to protect
17 the various pots that were created by that settlement,
18 because, as Mr. Kirpalani mentioned, absent that protection,
19 then the settlement really achieves nothing.

20 That's all I have, Your Honor. I appreciate your
21 time.

22 THE COURT: Thank you, Mr. Ellenberg.

23 Good afternoon, Mr. Feldman.

24 MR. FELDMAN: Good afternoon, Your Honor. For the
25 record, Matthew Feldman of Willkie Farr & Gallagher on behalf

1 of the COFINA Agent.

2 Mr. Ellenberg actually took on some of the issues I
3 was going to, so I will use less than 60 seconds.

4 I did want to start, Your Honor, by expressing
5 apologies for the agent, Bettina Whyte, who was going to be a
6 witness. She had an operation a couple weeks ago and her
7 doctor wouldn't let her travel, but she apologizes for not
8 being here.

9 THE COURT: I am sure we all wish her a speedy
10 recovery.

11 MR. FELDMAN: Thank you.

12 Your Honor, I did want to emphasize, with respect to
13 communication of junior creditors and senior creditors, while
14 it was outside the scope of the Agent's mandate and the
15 stipulation approved by this Court, in fact, on a very regular
16 basis, including meetings as well as telephone calls, the
17 agent and its multiple counsel communicated with junior
18 creditors, both represented by counsel and not represented by
19 counsel.

20 So to say that there was no one at the table when we
21 negotiated the split would not be accurate, but what we did
22 not take into account, because we were not permitted to, is
23 what the senior-junior split would be.

24 Further, regarding that, perhaps more importantly,
25 Your Honor -- I'm not going to repeat Mr. Kirpalani's

1 arguments, but the foundation to the settlement, with
2 certainty -- and in fact, Mr. Despins could testify to that
3 because, as he knows, it was originally in the settlement
4 agreement that the settlement would not be approved unless we
5 actually had that level of certainty from this Court that we
6 would not create new debt that would find its way back before
7 the Court to another Title III proceeding.

8 It was a foundation of the settlement. It ultimately
9 migrated to go into the Plan, but obviously the foundation of
10 the Plan is the settlement, and the foundation of the
11 settlement is the need for certainty.

12 If this Court is not persuaded by Mr. Kirpalani, as I
13 think it should be, then frankly, I think we ought to be
14 revisiting all of this, because the economic split was based
15 on an understanding that we would not be back before Your
16 Honor or any other court and have to deal with these issues
17 five, ten, 20 years out. This was a one-and-done situation.

18 Thank you, Your Honor.

19 THE COURT: Thank you.

20 Good afternoon again.

21 MR. ROSEN: Thank you, Your Honor.

22 Your Honor, as you can tell, what we tried to do was
23 to divide up some of the issues there so that we could each
24 hit them in the limited time that we each had. So I am going
25 to be focusing, Your Honor, on mainly the evidence that was

1 submitted and the compliance with PROMESA and the provisions
2 of the Bankruptcy Code. And I will try to address some of the
3 individual points also at the end, if I have a few more
4 moments.

5 THE COURT: And I'll tell you now, I will be asking
6 you before you sit down to provide some further clarity as to
7 the scope of the releases and injunctions.

8 MR. ROSEN: Yes, Your Honor.

9 THE COURT: Particularly, their effect with respect
10 to potential actions against former government officials in
11 their private capacity, and others who were involved in the
12 marketing of the securities, transfers of assets.

13 MR. ROSEN: Absolutely, Your Honor.

14 THE COURT: Thank you.

15 MR. ROSEN: Your Honor, not to steal the Schoolhouse
16 Rock reference, but my theory is, what do we know. What do we
17 know so far? Your Honor, we have five declarations that were
18 provided in support of the approval of the compromise and
19 settlement and the confirmation of the Plan.

20 We've incorporated by reference the first, the
21 Jaresko 2019 Declaration. We have the Matt Feldman
22 Declaration as well, Your Honor, in support of the 9019 and
23 the compromise and settlement in the COFINA case. And then,
24 Your Honor, again, we have the Jaresko Declaration, the
25 Brownstein Declaration and the Pullo Declaration.

1 As was said several times, Your Honor, none of the
2 information that was set forth in any of those declarations
3 was controverted and none of the declarants were subject to
4 cross-examination.

5 So what do we know from the 9019 declarations, Your
6 Honor? We know that the two agents were appointed to address
7 an extremely novel and complex set of issues. And included in
8 those issues -- they were developed in prior litigations, and
9 included also in the adversary proceeding and the summary
10 judgments that were filed before the Court.

11 We know that with the benefit of the mediation team,
12 we were able to -- excuse me -- craft a compromise of the
13 PSTBA that provided for the 53, 46 split, plus or minus, Your
14 Honor. We know that they believed that there was no
15 assurance, and "they" being the agents, Your Honor, there was
16 no assurance of success and that the winner-take-all approach
17 was too risky from both of their vantage points.

18 We know also, Your Honor, that by compromising the
19 matter, it provided the Commonwealth with funds that it
20 currently does not have an entitlement to. We know that
21 certainty and conclusion to a process that could have used
22 more, with no funds being available to either the Commonwealth
23 or COFINA until an alternate decision, or an ultimate decision
24 became final.

25 We know that by reaching an agreement, it allowed

1 COFINA to move forward with a Plan of Adjustment. And the
2 Commonwealth will have a greater understanding of the funds
3 that will be available to satisfy the needs of the
4 Commonwealth and its citizens for decades pursuant to the
5 Commonwealth Plan of Adjustment.

6 We also know, Your Honor, that all of these factors
7 weigh heavily in support of approval of the settlement that
8 favors or forms the basis for the COFINA Plan of Adjustment.

9 With respect to the three other declarations, Your
10 Honor, and Mr. Friedman took some of this already, but I want
11 to go to the Brownstein Declaration first, because from his
12 uncontroverted declaration, we know that the Oversight
13 Committee took the compromise and settlement that was reached
14 by the agents and developed securities for the issuance
15 pursuant to the COFINA Plan of Adjustment.

16 And we know that in doing that, and in conjunction
17 and consistent with the Fiscal Plan and its projections, the
18 securities were to provide debt service that would be
19 sustainable and payable for the life of the securities.

20 We know that the Plan of Adjustment negotiations
21 ensued that were led by the mediation team, and that the
22 participants included Bonistas (ph) as representatives of the
23 island bondholders; some senior only bondholders; some junior
24 only bondholders; some bondholders who held both junior and
25 senior bonds, some weighted more heavily to the senior and

1 some weighted more heavily to the junior.

2 Your Honor, in fact, Mr. Brownstein said in paragraph
3 18 of his Declaration, and if I may read that quickly -- which
4 I don't even have the time. Paragraphs 18 and 19, Your Honor,
5 of his Declaration make clear the people who were involved in
6 the negotiation and the fact that all parties were adequately
7 represented.

8 We also know that to the best of anyone's knowledge,
9 no one that requested admission to the mediation process was
10 excluded. And from the testimony and declarations and the
11 answers to the Interrogatories that were served upon GMS and
12 answered, we know that none of GMS -- excuse me, we know that
13 GMS never requested to participate in the mediation.

14 And lastly, Your Honor, from Mr. Brownstein, we know
15 that many issues associated with the development of the Plan
16 of Adjustment were hammered out during those sessions,
17 including the senior-junior issues, and what emphasis should
18 be placed on those issues, including the subordination and
19 make whole entitlements.

20 With respect to Ms. Pullo, Your Honor, we know the
21 solicitation of acceptances and elections with respect to the
22 Plan of Adjustment were done in accordance with the provisions
23 of the Disclosure Statement Order.

24 We know that the solicitation was extremely
25 successful, with over 8,000 votes or elections cast. But most

1 | importantly, we know that every class entitled to vote on the
2 | Plan, voted to accept the Plan in accordance with the
3 | provisions of PROMESA and the Bankruptcy Code. Again, Your
4 | Honor, that is all uncontroverted.

5 | From Ms. Jaresko's Declaration and its exhibits,
6 | which include the Plan of Adjustment itself, we learned of a
7 | general Plan development process. We learned that the Plan
8 | contained all of the requisite provisions required pursuant to
9 | PROMESA and the Bankruptcy Code.

10 | We learned that the Oversight Board took all steps
11 | necessary, consistent with PROMESA, in connection with
12 | certification of the Plan of Adjustment and the Fiscal Plan
13 | consistency. And we know, Your Honor, that her testimony was
14 | uncontroverted.

15 | From all of these five declarants, Your Honor, we
16 | know that the Court should approve the compromise and
17 | settlement, from not only the Commonwealth side of the ledger,
18 | but also the COFINA side.

19 | And we know that the compromise settlement, as a
20 | basis for development, was used to satisfy all the
21 | requirements for confirmation and the development of the
22 | COFINA Plan of Adjustment. And that all of those
23 | requirements, Your Honor, have been met and the Plan should be
24 | confirmed.

25 | Your Honor, I would note also that there is, within

1 the findings of fact, a reference to compliance with 3019,
2 Bankruptcy Rule 3019, and that was because, Your Honor, there
3 was a slight modification to the Plan subsequent to the
4 conclusion of solicitation.

5 It provided no modification to any of the treatment
6 of creditors, other than a reference in Article 10, I believe
7 Section 10.1 of the Plan, but that provided no different
8 distribution, Your Honor, to creditors, because already
9 provided pursuant to the Plan was that creditors were
10 receiving in the Assured junior and Assured -- excuse me, the
11 COFINA junior Assured bonds, Assured class, 100 cents on the
12 dollar.

13 All it provided for, Your Honor, was a mechanism, and
14 then Assured to receive the bonds, and then the marketing of
15 the bonds that Assured received pursuant to an agreement
16 between the government and Assured.

17 Your Honor, you also asked with respect to the Plan
18 provisions regarding the release's exculpation and injunction
19 language. I would first like to go back to a comment that was
20 made earlier by counsel representing the Cooperativas who had
21 a concern about his litigation that's outstanding and the
22 releases that might otherwise be given.

23 We have discussed the issue between us, Your Honor,
24 and I pointed out that one of the defendants there is COFINA.
25 And, of course, COFINA, that claim would be treated as a

1 Section 510(b) subordinated claim, and class ten, and receive
2 no distribution pursuant to the Plan. And counsel agreed.
3 And so it's not an issue with respect to COFINA being released
4 from that litigation.

5 We also discussed that the Commonwealth is a named
6 defendant in that case. And we are not here, Your Honor, to
7 provide a release for the Commonwealth, but I did note that
8 it's the same claims and causes of action against the
9 Commonwealth.

10 And pursuant to that Plan of Adjustment, there was no
11 doubt there would be a Section 510(b) subordinated claim.
12 Similarly, we will probably receive no distribution pursuant
13 to that Plan of Adjustment.

14 So that left several parties who were named
15 defendants. And I think this goes to the crux of the question
16 that you were asking. Your Honor, we're not here to try to
17 stop ongoing litigation by the cooperativas against any of
18 those parties. And if you recall, Your Honor, at the
19 disclosure statement hearing, you asked me to make sure that
20 there was no coverage within those releases of underwriters,
21 investment bankers, et cetera.

22 I went back and I looked at the releasees, Your
23 Honor. There were no underwriters listed, but there were
24 investment bankers listed. So when we filed a Modified Plan,
25 Your Honor, prior to the solicitation, I believe it was, or

1 even the third amended one that got filed just before, Your
2 Honor, we made sure that we deleted the reference to the
3 investment bankers.

4 THE COURT: But there is, I think, and I don't have
5 it right in the front of me, a general reference to related
6 parties of the Commonwealth and COFINA and employees, agents,
7 so on and so forth.

8 And I didn't remember seeing a definition that
9 specifically cabined that reference, so as to make it
10 absolutely clear that you didn't intend to reach others in the
11 categories that I've just mentioned.

12 MR. ROSEN: Your Honor, I do have that definition in
13 front of me. It is 1.150 of the Third Amended Plan, entitled,
14 Related Persons. There is a reference in there to
15 professionals. But we'd be happy, Your Honor, to make sure we
16 carve that other out, because it is not our intention to
17 provide that at this time.

18 And we can do that either of two ways, Your Honor.
19 We can include it in the Proposed Confirmation Order, saying
20 not withstanding the definition, these expressly are not to be
21 included, rather than filing another Plan --

22 THE COURT: That would be helpful. And what about
23 the former official issue?

24 MR. ROSEN: There are references in there, Your
25 Honor, to former employees or managers. And is it the Court's

1 request that we also exclude those as well?

2 THE COURT: Well, my first question was whether you
3 intended that to mean former government decision makers who
4 were involved with these and --

5 MR. ROSEN: Based upon the terms of the definition,
6 Your Honor, it would be included. It was a request of the
7 governmental parties in the context of the negotiation of the
8 Plan. I obviously could address that issue with them.

9 THE COURT: If there's some consideration being put
10 into all of this by some of those people, perhaps I might be
11 able to be persuaded that that's appropriate --

12 MR. ROSEN: Absolutely, Your Honor.

13 THE COURT: -- but I don't see that right now.

14 MR. ROSEN: I understand, Your Honor.

15 Mr. Friedman is concerned that there -- to the extent
16 that they are carved out, which we would understand the
17 Court's position, there would be resulting claims back against
18 the Commonwealth, probably indemnification claims of some
19 sort.

20 I don't know where they would fall in the spectrum of
21 claims against the Commonwealth estate at this time. Probably
22 general unsecured claims, Your Honor. I don't know if they
23 would be Section 510(b) subordinated claims, because I don't
24 know what the claims would be against them, and then the
25 parallel back again against the Commonwealth. But --

1 THE COURT: So --

2 MR. DESPINS: May I confer with Mr. Rosen one second?

3 THE COURT: Yes.

4 MR. ROSEN: Mr. Friedman is concerned about people
5 who were working during the Title III process, Your Honor.
6 And we believe that to the extent they were providing services
7 during the Title III, they would be covered by the exculpation
8 provisions of the Plan in providing services to COFINA, or to
9 the Commonwealth in connection with respect to COFINA, Your
10 Honor, because everything is linked solely to the actions with
11 respect to COFINA.

12 Mr. Despins is concerned about some claims that might
13 be lodged, and to the extent that they are lodged, he's
14 essentially asking for the judgment reduction provisions. So
15 that is a claim, there couldn't be more of a recovery, or an
16 assessment against one than recovery --

17 THE COURT: Well, rather than doing this on the
18 fly --

19 MR. ROSEN: Yes.

20 THE COURT: -- may I request a supplemental
21 submission and proposal on the issue, and just add into this
22 mix as to indemnification. I don't know whether there are
23 individual employment contracts or whatever, but in the flood
24 of the lift stay litigation that I've seen involving Section
25 1983 claims, I understand that there is a statute that lets --

1 that gives the Commonwealth discretion as to whether to
2 indemnify voluntarily, but doesn't mandate it or make it
3 automatic.

4 MR. ROSEN: Right, Your Honor. Your Honor, I see
5 that I'm well past my time.

6 THE COURT: Keep going.

7 MR. ROSEN: Okay. Thank you, Your Honor. I
8 appreciate that very much.

9 Your Honor, one of the comments that was made, and I
10 know Mr. Friedman said it, but -- or responded to it, the
11 statement by Mr. Hein I think is just a misapplication of
12 PROMESA and what it says. The best interest test is not with
13 respect to a single class.

14 And we have reserved that right or that argument in
15 connection with the brief that we filed. We noted it, Your
16 Honor. And that it's the best interest of creditors taken as
17 a whole.

18 And we looked at what would happen here on the COFINA
19 side if, in fact, that litigation -- what would the recovery
20 be. And we believe the compromise and settlement, Your Honor,
21 sufficiently establishes that the best interest test for all
22 the creditors of COFINA has been satisfied.

23 There were some comments made by Mr. Eisenberg, and
24 specifically his argument that if the bondholders' lien is
25 defective, then the seniors and juniors would be equal. But

1 again, Your Honor, that ignores what the controversy is all
2 about.

3 The controversy was whether the senior versus junior
4 -- or, excuse me, the sales and use tax. I can't even read my
5 writing here. The sales and use tax was property of COFINA or
6 the Commonwealth. And the settlement effectively said some,
7 but not all, of the SUT are COFINA's property.

8 So the lien that COFINA grants the bondholders, Your
9 Honor, is good, but it is against less sales and use taxes
10 than COFINA used to get as part of the original resolution.
11 Therefore, the seniors get more satisfied than the juniors.
12 There is no taking. There is no discharge issue with respect
13 to that, Your Honor.

14 With respect to Mr. Hein's comment, Your Honor, or
15 several of his comments -- I want to make sure I read it
16 again. The reasonable -- the new bonds can be enforceable,
17 and the SUT, not available resources of the Commonwealth, it's
18 that the SUT is a smaller share of the former SUT, and that
19 smaller share, Your Honor, implements the settlement.

20 The new bond legislation that has been talked about
21 by Mr. Kirpalani and Mr. Friedman here, the COFINA Title III
22 Plan, excuse me, that restructures the liens are granted by
23 COFINA. And that legislation is -- it is correct that it is a
24 necessary condition precedent to the effectiveness of the
25 Plan. It cannot be viewed in the abstract. But also, the

1 | legislation itself does not violate the Contracts Clause,
2 | excuse me, not when COFINA itself carries out the terms of the
3 | Plan of Adjustment.

4 | Lastly, Your Honor, there was a statement by one of
5 | the objecting parties, and I cannot recall which at this time,
6 | it might have been Mr. Hein, making a statement that I said
7 | something. And I don't think that's what I said.

8 | Specifically, he said that Brian Rosen claims that
9 | the sales and use tax belongs to COFINA. That's not it at
10 | all, Your Honor. I said that the Commonwealth Statute -- let
11 | me rephrase it. I said that the issue of ownership of that
12 | was in dispute, and while the Commonwealth claims that title
13 | did not transfer, the COFINA side of the house claims that it
14 | did.

15 | So I just want to point out that there never was an
16 | admission by me or by anyone else that actually was property
17 | of one or the other. Rather, that it was a point that was in
18 | constant dispute by the parties, by 2016, when Lex Claims
19 | litigation was commenced, and through the adversary
20 | proceeding, and the Summary Judgment Motions that were argued
21 | before the Court, until they're compromised before the Court
22 | today, Your Honor.

23 | With that, Your Honor, we would submit that this
24 | phase of the -- oh, another question.

25 | THE COURT: Yes. I had asked you in the morning --

1 MR. ROSEN: I'm sorry.

2 THE COURT: -- to put on your agenda the supremacy
3 provision of the Proposed Order insofar as it goes to related
4 documents of the Plan and would seem to say that contracts,
5 other documents in that collection, which is unspecified, have
6 the force of federal law by virtue of the Supremacy Clause.
7 And it's also a little bit confusing, insofar as they include
8 internal choice of law provisions that point to Puerto Rico
9 law with regard to Puerto Rico's choice of law requirements.

10 And so, first of all, are you trying to get me to
11 transform commercial paper, commercial deal documents, into
12 federal law?

13 And second of all, how does one avoid the spiral loop
14 that at least is facially suggested by the choice of law
15 provisions?

16 MR. ROSEN: Your Honor, I know that Mr. Kirpalani
17 tried to answer that question for you.

18 THE COURT: No pointing fingers. You're there.

19 MR. ROSEN: Thank you.

20 THE COURT: This one's for you.

21 MR. ROSEN: I really do appreciate that. You're
22 right, Your Honor, in them -- I think it's -- I'm looking at
23 one of the documents. I assume it's --

24 THE COURT: It's findings of fact.

25 MR. ROSEN: 190?

1 THE COURT: Yes, paragraph 190, and paragraph 53 of
2 the Proposed Order.

3 MR. ROSEN: Right. I'm looking currently at 190,
4 Your Honor.

5 You're right. We are asking you to make that
6 finding.

7 We look at this transaction as a whole, Your Honor,
8 including the various documents that are necessary to do it,
9 including all the documents that were included in the Plan
10 Supplement, Your Honor, because all of those documents are
11 designed to give the level of certainty that the creditors
12 have been looking for as part of the process. The certainty
13 that Mr. Feldman referred to in the negotiation process with
14 Mr. Despina.

15 So the answer is yes, we're asking the Court to do
16 that. I understand the Court's concern, however, about future
17 amendments, modifications, et cetera. And the question is how
18 could you do that if you don't even know what's coming down
19 the pipe.

20 I do understand that concern, Your Honor.

21 THE COURT: And how do I do that when -- you're
22 either asking me to, you know, put on my Hogwarts hat and say,
23 anything I've read is now federal law because I signed an
24 Order, or to create my own path through precedent and other
25 recognized provisions of general legal principles to decide if

1 | there's a logical path through these very complicated
2 | documents that says they are unquestionably, indisputably,
3 | naturally consistent, so consistent with law that I can make
4 | them law as a federal matter.

5 | And honestly, I'm not well enough staffed to do the
6 | latter, given the traffic into my inbox. And the former seems
7 | a little presumptuous to me. So how are you going to help me
8 | out?

9 | MR. ROSEN: Okay. Well, I won't go to the former,
10 | because it's too presumptuous for us to ask you to do that.
11 | With respect to the latter, though, I think we tried to weave
12 | that for you today, and I think we might be able to provide
13 | you the pathway, if you will, as you indicated, to how to get
14 | there through the various provisions that we talked about
15 | earlier today.

16 | MR. KIRPALANI: Your Honor, could I be heard on this
17 | question?

18 | THE COURT: Yes.

19 | Mr. KIRPALANI: So I think there are two distinct
20 | issues. And if I understand the Court's concern, it's that
21 | paragraph that says ancillary documents have the force of law,
22 | too, even though Your Honor has never seen them. And they
23 | provide for Puerto Rico law; in some instances, New York law;
24 | in other instances, the indenture.

25 | That's governed by New York law. It's not federal

1 law. It's an indenture on the instructions agreement or the
2 flow of funds. Things like this are ancillary documents that
3 are important, but they're governed by state law.

4 I think the key distinction is the Confirmation Order
5 is obviously federal law. The Plan has the force of federal
6 law pursuant to statute.

7 THE COURT: As I said, I can understand as to the
8 order in the Plan. It's the rest of that sentence --

9 MR. KIRPALANI: And I think the rest of the
10 documents, what they're designed to do is to protect the
11 property rights that have been validated, that have been
12 determined to be valid, but they themselves aren't governed by
13 state law.

14 So the indenture is a New York contract. And the
15 other ancillary documents, to the extent they're governed by
16 Puerto Rico law, they are Puerto Rico law agreements. So I'm
17 not sure that there's as much attention here -- maybe the
18 wording needs to be fixed.

19 THE COURT: So in your supplemental submission that
20 deals with the release issue, tell me what you want paragraph
21 190 and 53 to say.

22 MR. ROSEN: We will address that, Your Honor.
23 Absolutely.

24 THE COURT: Thank you.

25 MR. KIRPALANI: One more thing, I'm sorry, on that

1 subject, Your Honor. So some of those documents are almost in
2 final form.

3 THE COURT: Hogwarts hat time again, yes.

4 MR. KIRPALANI: So there's one or two small drafting
5 issues that remain open, but the PSA parties, pursuant to the
6 Plan, are still working with AAFAF and the Board to finalize
7 them. And we will conclude that promptly after the hearing,
8 Your Honor.

9 THE COURT: So you'll let me know what the universe
10 is and what you want me to say about that.

11 MR. KIRPALANI: Yes.

12 MR. ROSEN: And he's not in Slytherin, Your Honor,
13 not at all.

14 THE COURT: Right. I think Mr. Stancil is --

15 MR. ROSEN: Yes. I just wanted to make one other
16 comment. Well, come --

17 MR. STANCIL: Your Honor, Mark Stancil on behalf of
18 the General Obligation Bondholders Group. Mr. Rosen mentioned
19 best interest of creditors test and the Board's view that it
20 applies to creditors as a whole in the alternative.

21 I would just like to urge the Court not to reach
22 whether it applies to the individual creditor class or the
23 creditors as a whole in this case, because we think the Plan
24 can be confirmed without deciding that question.

25 And I think that question will be hotly disputed in

1 the Commonwealth case, and so to the end of trying to get us
2 all there without a lot of fighting here, I think that it
3 would be best if the Court doesn't reach it.

4 If the Court is inclined to reach it, such a
5 difficult and complicated question, we respectfully ask the
6 Court to reach it, if the Court is inclined in this matter --

7 MR. ROSEN: Mr. Stancil is correct, Your Honor. We
8 believe if you would look individually, you'd be more than
9 satisfied. They did ask us in the context of preparation of
10 the Memorandum of Law and Reply, and not just Mr. Stancil's
11 group, but other creditors of other people who had an
12 opportunity to weigh in pursuant to the Plan Support
13 Agreement, not to make an argument, as the primary argument.
14 But we did include it as a footnote, as an alternative base.

15 But we do believe, as Mr. Stancil said, that we could
16 confirm this Plan just by satisfaction on a class-by-class
17 basis.

18 THE COURT: And so in my remarks for follow-up here,
19 I'm going to take these remarks under advisement. Should I
20 come to the conclusion I need further briefing on anything, I
21 will let you all know.

22 MR. ROSEN: Thank you, Your Honor.

23 I believe, unless you have any additional questions,
24 that would conclude the confirmation aspect of this matter,
25 and then we would move on to Section 19.5 of the Agenda.

1 THE COURT: Thank you, all.

2 And I believe we'll take a ten-minute break in
3 between the two. While everybody's here, I don't know if
4 everybody's staying for the 19.5 part, I do want to thank
5 everyone who has worked so hard for so long, of course
6 including the mediation team, but also including each of the
7 other parties to these negotiations and drafting.

8 And I also thank the general people of Puerto Rico
9 who are concerned about their homeland and who have been
10 trying to make their voices heard contextually, you know.

11 Whether that's material to particular decisions of
12 law or not is something that I will address in some fashion as
13 I go along, but I recognize the investment of hearts, minds,
14 souls, lives and bodies here, and of the objectors as well in
15 this litigation.

16 And I thank you all for the privilege of being in the
17 incredibly challenging position of making these important
18 decisions for the future of Puerto Rico and the future of
19 these proceedings. And I recognize that you all didn't choose
20 me, but I am honored to have been chosen and will continue to
21 seek to bring my best to the task.

22 MR. ROSEN: Your Honor, I do want to take this
23 opportunity to thank not only you, but your chambers, Judge
24 Dein, and the entire court staff for helping us throughout the
25 process.

1 THE COURT: Thank you. And my thanks are added to
2 those.

3 So now that we've all thanked each other thoroughly,
4 let's take a ten-minute rest. We'll reconvene at 2:30.

5 (At 2:20 PM, recess taken.)

6 (At 2:35 PM, proceedings reconvened.)

7 THE COURT: Good afternoon. Please be seated. I beg
8 everyone's indulgence while I sit down.

9 I'd like to round up my request on the other two
10 matters. Okay?

11 Mr. Rosen, you are still here?

12 MR. ROSEN: Do you need me to come down, ma'am?

13 THE COURT: No. I'm hoping your answer to this will
14 be yes and I'll just repeat it. Oh, the microphone is coming
15 to you.

16 MR. ROSEN: Yes.

17 THE COURT: So I'm reserving decision on the 9019
18 motion and the confirmation motion. I have specifically
19 requested supplementation regarding clarification and scope of
20 the releases, injunctions and related provisions. And also
21 with respect to the supremacy provision, I am accepting the
22 offer from AAFAF of the background for the legislative
23 development process.

24 And you can throw in there the legal basis for the
25 independent corporation of the Commonwealth of Puerto Rico,

1 | because I don't -- I didn't see statutory citations for
2 | that.

3 | MR. ROSEN: Yes, Your Honor.

4 | THE COURT: And it would be very helpful to have a
5 | cogent, in one place, written iteration with the citations of
6 | the rationale for the validity provisions that Mr. Kirpalani
7 | and Mr. Rosen have together offered today.

8 | And what would you suggest as a deadline for that?

9 | MR. ROSEN: Monday, Your Honor.

10 | THE COURT: That would be very helpful. Thank you.

11 | MR. ROSEN: For me, too.

12 | THE COURT: All right. Then I will look forward to
13 | it. And thank you.

14 | MR. ROSEN: Thank you, Your Honor.

15 | THE COURT: Good afternoon.

16 | MR. SCHAFFER: Your Honor, perhaps before we go on
17 | the clock, I can report that Judge Houser has been relentless
18 | and there has been some progress with regard to the remainder
19 | of what we're doing here.

20 | Your Honor, for the record, I'm Eric Schaffer of Reed
21 | Smith on behalf of the Bank of New York. My partner, Louis
22 | Solomon, will be handling the evidentiary aspects today.

23 | Your Honor, what I'd like to report is that with
24 | Judge Houser's urging, we have reached an agreement with
25 | regard to the Section 19.5 issues with Ambac. On the basis of

1 that agreement, Ambac will not be participating in the legal
2 argument or the evidentiary part of the hearing.

3 MR. HERTZBERG: Good afternoon, Your Honor. I'm Gabe
4 Hertzberg from the Curtis Mallet firm. I represent Ambac
5 Assurance Corporation. I'm here to tell you that what
6 Mr. Schaffer said is correct.

7 THE COURT: Well, thank you for this news.

8 And thank you, Judge Houser, who I gather helped make
9 this happen.

10 MR. HERTZBERG: I second that.

11 THE COURT: So thank you, and congratulations.

12 MR. GLENN: Good afternoon, Your Honor. Andrew Glenn
13 from Kasowitz, Benson, Torres, LLP, on behalf of Whitebox
14 entities.

15 THE COURT: Good afternoon.

16 MR. GLENN: Up until three hours ago, we were
17 coordinating with Ambac on the presentation, argument, and
18 evidence before Your Honor. I'm going to try to stick to the
19 time limits even without their participation. I would just
20 like to ask the Court for its indulgence with a little
21 flexibility, given that this all came about at the last
22 minute. Thank you.

23 THE COURT: Understood, and you will have it.

24 All right. So are you ready to begin opening
25 statements?

1 Mr. SCHAFFER: Yes, Your Honor. Again, Eric
2 Schaffer.

3 Your Honor, in the last two weeks, we've submitted
4 two expert reports, two briefs. Whitebox has submitted four
5 briefs. I don't think there's a lot that's really new here,
6 but I think what's most significant, though, is this is not
7 the first time we've seen a plaintiff suing an indentured
8 trustee, trying to deprive the trustee of the ability to pay
9 fees and expenses for funds held by the trustee.

10 In our papers, we cited you to five recent New York
11 cases that considered the same arguments that plaintiffs are
12 making here. Each of those cases determined that unless and
13 until the plaintiff can prove that it comes within the
14 exception, there is willful misconduct or gross negligence,
15 until that time, the trustee should be permitted to draw upon
16 funds in its possession to pay fees in the ordinary course.

17 There are four decisions from just last year in the
18 Southern District of New York. They were issued by four
19 different judges, involved four different trustees, and each
20 of them rejected efforts by plaintiffs to delay payment of
21 defense costs until after merits were determined.

22 In each of those cases, the plaintiffs alleged
23 wrongdoing within an exception, and in each case the Court
24 said, we're going to stay that challenge until the trustee is
25 proven to have been found guilty of this misconduct.

1 In the most recent of these cases, *Royal Park versus*
2 *U.S. Bank*, Judge Marrero held that plaintiff's arguments must
3 await such time, if any, that the trustee, quote, is found to
4 have acted grossly negligently, unquote. And, of course, all
5 of these cases are in the federal court, so no real harm,
6 because the trustees were not going away.

7 Similarly, in *Pimco versus Wells Fargo Bank*, a state
8 court decision, it was the same sort of facts. The Court
9 permitted the Trustee to reserve 57 million dollars to pay
10 anticipated legal fees.

11 Now, Whitebox has said, ah, that case didn't involve
12 a gross negligence claim. No, it involved a claim of willful
13 misconduct. It's in paragraph one of the underlying
14 complaint. And the Court said that there's really no
15 prejudice because the trustee, quote, is going to be around if
16 plaintiffs succeed, unquote, on the underlying merits.

17 Whitebox says, well, those decisions just maintain
18 the status quo. Well, Your Honor, the status quo here is the
19 trustee holds the money and the trustee is able to pay its
20 expenses on a current basis.

21 There's no prejudice here to Whitebox, because we
22 agree, first, if there's money left over, of course we're
23 going to refund it. Second, as in the RPI cases, we agree
24 that they may, subject to some appropriate procedures,
25 challenge reasonableness.

1 And finally, if they prevail, they may seek a
2 judicial determination that we need to disgorge any fees that
3 we may not be entitled to based on a theoretical determination
4 that we were grossly negligent or we engaged in willful
5 misconduct.

6 So with these protections, I think we are squarely
7 within the *Pimco* decision, the *Royal Park* decision. There is
8 no harm in our retaining these funds.

9 Now, it's interesting, Whitebox does not acknowledge
10 all of these protections. Your Honor, no one questions the
11 credit of the Bank of New York Mellon, and by contrast, we
12 should not be left to pursue a Cayman Fund or others. In this
13 case, until we are proven to have engaged in bad conduct, we
14 should be entitled to retain these monies and apply them on a
15 current basis.

16 Now, let me turn to the Plan. The Plan recognizes we
17 have a secure claim. And under 19.5, this Court has
18 determined the amount that, quote, shall satisfy, unquote,
19 shall satisfy all obligations of COFINA and all rights of the
20 trustee under the resolution.

21 Now, Whitebox has argued it never assumed COFINA's
22 obligations. Well, they didn't object to the Plan. They are
23 stuck with the requirements of 19.5. And the requirement
24 there is that COFINA must satisfy its obligations and the
25 trustee's rights.

1 This requires that we get, in accordance with PROMESA
2 and the Bankruptcy Code, the indubitable equivalent of our
3 secured claim. They ignored this in their papers as well.
4 Again, there's no objection to this in their plan. We are
5 entitled to the indubitable equivalent.

6 And standing in the shoes of COFINA, for purposes of
7 19.5, under that mechanism, they have to show that we are
8 receiving the indubitable equivalent by a preponderance of the
9 evidence. And, Your Honor, they have no evidence. We've
10 submitted two expert reports. They have not submitted
11 anything.

12 Now, Your Honor, turning to the resolution, which is
13 addressed in 19.5, it gives us multiple layers of protection.
14 I don't think I have time to get into everything in our
15 papers, but of course we covered a lot of this.

16 We have payment priority. We have lien priority.
17 Section 804 of the Resolution says that we are entitled to
18 payment of trustee's expenses, and it indemnifies us as well
19 against losses and liabilities.

20 Section 1103 is an intercreditor agreement that kicks
21 in after a default, not between us and COFINA, but between us
22 and bond owners. It gives us a payment priority. And under
23 that waterfall, it is only after we have provided for our
24 expenses and set aside funds that payments would go out to
25 bond owners.

1 Finally, Your Honor, as we've addressed in our
2 papers, Section 501 is a pledge of the taxes subject to our
3 payment rights under Section 804, and in the express language,
4 all other provisions permitting application for the purposes
5 set forth in the resolution. That includes not just 804, but
6 it includes the payment priority, the intercreditor agreement
7 in 1103.

8 Let me focus on 1103. They acknowledge that this is
9 an intercreditor agreement among nondebtors. And after
10 default, the Trustee, in its sole opinion, is entitled to
11 reserve amounts that may be advanced for legal fees. This is
12 expressly senior to the bond owner.

13 The purpose is if COFINA cannot meet its obligations
14 under 804, we have a payment priority against Whitebox. And
15 1103.3 gives us discretion to make periodic contributions.

16 Your Honor, we pointed you to the First Circuit's
17 decision in the *HSBC* case. Under Section 510(a), the
18 enforcement of subordination provisions is no longer a matter
19 committed to the Bankruptcy Court's notion of what may or may
20 not be equitable.

21 Now, we say that our rights are secured, but even if
22 they were not, under the payment priority, under 1103,
23 intercreditor agreement, we come first. And under case law
24 we've cited, if you have a junior creditor that is secured and
25 a payment priority in favor of a senior unsecured creditor,

1 the senior unsecured creditor receives payment. It recovers.

2 The only real dispute here under Section 1103 is what
3 comes within the waterfall. And with this, I think it's clear
4 that the litigation expenses here undoubtedly are incurred in
5 a context of our performance of our duties under the
6 resolution.

7 Our performance is at the heart of the Whitebox
8 claims. It all implicates the integrity of the resolution,
9 the existence of events of default, and the relationship
10 between us and bond owners. We also say under 1103, these are
11 expenses that are necessary, quote, in the opinion of the
12 trustee, unquote, to protect the interest of bond owners.

13 Now, they say how are bond owners protected? Well,
14 we have an interest in protecting the integrity of the
15 resolution. That includes protecting all other bond owners
16 against specious claims.

17 It also is a fact that we reserve the right to pursue
18 counterclaims under 19.5, and all of this is determined not
19 now, but it's determined when they file their lawsuit. And
20 it's not altered by the intervention of a Title III
21 proceeding.

22 They point to 1103, to the language subject to 804.
23 Well, that's not a limitation, it's a priority provision.
24 It's intended to insure that the intercreditor waterfall only
25 becomes applicable if COFINA can't pay. And that makes all

1 the sense in the world. We should have to look to COFINA
2 first, and where there's a default, as 1103 provides, if
3 COFINA can't pay, then we go to the waterfall.

4 All of this is part of what I'll call a seamless,
5 interconnected set of protections for the Trustee. And as
6 sophisticated parties -- and the Whitebox folks are very
7 sophisticated. They certainly had the ability to read the
8 indenture, to do their due diligence before investing. They
9 cannot escape the subordination agreement.

10 Your Honor, there is a lot I could say about 804, but
11 I think, consistent with the time limits here, I'm going to
12 move on, and I'll come back to that if I have time.

13 And I'll move to Section 501. Under Section 501,
14 COFINA pledges all of the taxes, the sales and use taxes to
15 the trustee as security for payment of the bonds. But if you
16 look at 501, that pledge is subject to Section 804 and subject
17 to the provisions of the resolution for application -- or the
18 purposes set forth in the resolution.

19 Now, what does this mean? It's subject to 804.
20 That's where COFINA has to pay us. And it's subject to the
21 payment priority in 1103. Those are provisions that are
22 expressly provided to come within the 501 pledge, and they
23 come on a senior basis.

24 The effect is that even if we were not secured by the
25 charging lien in 804, even then, we still come first. We get

1 priority under the Section 501 pledge.

2 The argument they make here is that the 501 pledge
3 really only secures principal and interest. We read these
4 provisions subject to 804, subject to other provisions of the
5 resolution. We read them, right out of the document, this is
6 not a limitation of the trustee's rights. It's a
7 recommendation that we have rights under these other
8 provisions.

9 If you look at the language, 501 does not say it's
10 subject to 804, but really only for things that may be current
11 expenses or that might be subject to a charging lien. It
12 doesn't say that all rights and priorities under the waterfall
13 exist, but they really only come in after principal and
14 interest.

15 It doesn't say that because, of course, that would do
16 violence to the intent of this section, and indeed, it would
17 do violence to the intent of the indenture read as a whole.
18 It doesn't exclude the payment priority giving meaning to 501.
19 Our rights are senior. Our rights are secured.

20 Your Honor, I could get into a discussion of the
21 cases that they cite, *Becker* and others. I really think we've
22 covered them.

23 THE COURT: I've read the briefs.

24 MR. SCHAFFER: It's wholly inapplicable. And that
25 enables me to move on.

1 Your Honor, let me back up quickly to 804, as I see I
2 have a little bit of time that I've left myself. 804 needs to
3 be read as an integrated provision. There are two clauses.
4 There's a clause for payment of expenses. There's an
5 indemnification. They are not redundant.

6 The indemnification picks up losses and liabilities,
7 but they are completely integrated because the indemnification
8 clause starts out, further, it is all one in the same, and
9 that read is consistent with what this Court did. Harkening
10 back to the first time we were before you in the interpleader,
11 where you said that from time to time, we can reserve for and
12 pay reasonable fees and expenses, whether or not due and
13 owing, and you noted COFINA's obligations survived
14 satisfaction and discharge of the bonds and survived
15 termination of the resolution for any reason.

16 Just heading to my conclusion, Your Honor. Again, we
17 have layers of protection. We've got the protections in the
18 Plan. We've got the protections, we have the lien and payment
19 priorities in 804 from COFINA. We have the 1103 intercreditor
20 priority of payment over bond owners.

21 Now, Your Honor, I think it's useful to recognize
22 that when they're attacking our rights under the
23 intercreditor, they're not bond owners. A beneficial owner,
24 as Whitebox claims that it is, does not have standing under
25 the resolution. The bond owners are the registered bond

1 owners. They have no standing to even challenge our rights
2 under Section 1103.

3 We then have 501. Your Honor, if you read all of
4 this together, compensation, indemnification, lien priority,
5 payment priority, it demonstrates an intent to protect the
6 trustee and ensure we are not out of pocket unless we have
7 been found, actually found to have been engaged in gross
8 negligence or willful misconduct.

9 It's confirmed by reading all of the protections that
10 we had, the various exculpations, the limitations. It's
11 confirmed by the cases we've cited about the public policy,
12 protecting the trustee, recognizing the critical role of the
13 trustee.

14 Your Honor, the notion that when this resolution was
15 drafted, there was an intention that we should assume an
16 obligation to fund, self-fund unknown litigation years into
17 the future, where we're getting compensation of 2,000 dollars
18 per year, per series, that notion would be absurd, and it
19 would be contrary to the history of the role of the indenture
20 trustee, and it would be contrary to practice.

21 We bargained for the right to cash collateral. It's
22 protected by the indubitable equivalent provisions as
23 incorporated by PROMESA and the Bankruptcy Code. We have a
24 payment priority.

25 Your Honor, I don't believe they can meet their

1 | burdens with regard to PROMESA and the Bankruptcy Code, and
2 | they certainly cannot meet their priorities -- excuse me,
3 | certainly cannot meet their burdens with regard to an
4 | intercreditor agreement, as to which they are not even a
5 | beneficiary.

6 | Thank you.

7 | THE COURT: Thank you, Mr. Schaffer.

8 | Good afternoon, Mr. Glenn.

9 | MR. GLENN: Good afternoon. For the record, again,
10 | Andrew Glenn on behalf of Whitebox.

11 | I'd like to start my presentation, Your Honor, with
12 | an overview of this undisputed set of consequences. First,
13 | the Plan of Adjustment in this case provides Bank of New York
14 | with a release of all claims of the parties to the Plan
15 | Support Agreement other than Whitebox and Ambac. And our
16 | claims were expressly reserved under that Plan Support
17 | Agreement.

18 | The record is clear, if you read the words in the
19 | resolution and in the security agreement to the resolution,
20 | the Bank of New York never has had a secured claim against
21 | COFINA. And as much as Mr. Schaffer would want the words to
22 | say that, that's not what those words say.

23 | It does not have any right to withhold distributions
24 | to any COFINA bondholders for any indemnity claims under the
25 | resolution. That is, it does not have a charging lien for the

1 expenses to be incurred in this litigation. And in fact,
2 COFINA has never had any obligation to advance any defense
3 costs to BNY.

4 Finally, BNY confirms that Whitebox never agreed to
5 indemnify it as would be required by applicable law.

6 I think the narrow question Your Honor has to answer
7 in this particular dispute is whether Section 19.5 creates any
8 rights to indemnification beyond those already set forth in
9 the resolution. As we demonstrate in our papers, we think the
10 answer is no.

11 THE COURT: And so, just to be clear, you dispute the
12 proposition that the resolution creates such rights even as
13 against COFINA?

14 MR. GLENN: Correct.

15 THE COURT: And you also say that neither rights, nor
16 a basis for holding Whitebox to any COFINA obligation that
17 might exist --

18 MR. GLENN: Correct.

19 THE COURT: -- is imposed by 19.5?

20 MR. GLENN: Correct.

21 THE COURT: Thank you.

22 MR. GLENN: I think the best way to put this is their
23 best case here is they have a general unsecured claim for
24 indemnification that would have been validated at the end of
25 the litigation, which is consistent with what the law says

1 about general validation claims such as this.

2 Looking at Section 19.5, Your Honor. The question
3 is, does Section 19.5 state in clear and unequivocal terms
4 that Whitebox must indemnify Bank of New York?

5 Given that there's no agreement outside of 19.5, we
6 have to parse through this language, and it's all very
7 equivocal.

8 THE COURT: This language you're talking about is
9 going back to the resolution now?

10 MR. GLENN: No. 19.5 of the Plan of Adjustment, Your
11 Honor.

12 THE COURT: Just for clarity, I didn't think I heard
13 Mr. Schaffer argue, and I didn't think I had seen in Bank of
14 New York's briefs, a contention that 19.5 is the source of the
15 indemnification right, although there is an argument that 19.5
16 is what makes Whitebox responsible for paying COFINA's
17 obligation.

18 MR. GLENN: Correct.

19 THE COURT: And I don't see Mr. Schaffer indicating
20 that I've misunderstood his argument.

21 MR. GLENN: I mean, I think, Your Honor, they need
22 19.5.

23 THE COURT: You think they need 19.5.

24 MR. GLENN: That's our position. That's our
25 position. And if you look at the language in Section 19.5, it

1 says only -- and again, I'm going to only cite the relevant
2 words, what amount, if any, shall be withheld by the
3 disbursing agent or Bank of New York. And whether Bank of New
4 York shall be reimbursed by Ambac and Whitebox, with the
5 occurrence of fees.

6 And then it concludes by saying, in each case, such
7 determination and the fulfillment of any obligations of Ambac
8 and Whitebox shall satisfy COFINA's obligations.

9 So we think, and again, if it's undisputed, that's
10 great, that 19.5 does not create any new obligation. It's
11 merely a reservation of rights.

12 And I want to make something clear for the record.
13 Whitebox supports this Plan of adjustment. There's a dispute,
14 Your Honor, as to what Whitebox's obligation is under Section
15 19.5.

16 If Your Honor concludes that we're wrong about what
17 19.5 says and what our -- what we believe our legal
18 obligations are, we'll live with that. That's why we voted in
19 favor of the Plan and that's why we're a party to the Plan
20 Support Agreement.

21 Now, getting to the issue of 1129 and 510(a), we
22 think these provisions are completely irrelevant to this
23 dispute. 1129(b)(2) applies in a cramdown. I think you heard
24 from Mr. Rosen chapter and verse that this is the opposite of
25 a cramdown. This is a fully consensual bankruptcy case.

1 And even if somehow cramdown were relevant, there's
2 no obligation for Whitebox to provide indubitable equivalency.
3 The subordination agreement, Your Honor, presupposes that
4 there is a priority obligation to pay Bank of New York, and
5 that's what Your Honor otherwise needs to determine without
6 regard to Section 510(a) of the Bankruptcy Code.

7 We think that the *Becker* case we cited, which is also
8 a very recent vintage, is the most relevant case here, Your
9 Honor. That, too, was a bankruptcy proceeding. The only
10 bankruptcy proceeding, I think, that's at issue in this case
11 or cited in this case.

12 And if you parse through what happened there, it's
13 fully analogous to this case. You had a Plan that settled the
14 indentured trustee's obligations, vis-a-vis the debtor. It
15 was a litigation against the Bank of New York. The Plan there
16 preserved indemnification rights solely to the extent it could
17 assert a charging lien.

18 And Bank of New York, in that case, tried to assert
19 that there was a charging lien, and the Court rejected it and
20 said, just as we're contesting here, that the Plan did not
21 create any additional rights beyond those in the bond
22 documents. It only preserves specific rights and obligations
23 in order to permit indenture trustee to achieve specified
24 goals. But in the end, the bondholders never agreed to assume
25 any of the borrower's indemnity obligation.

1 The COURT: So there was no provision in *Becker*
2 similar to Bank of New York's construction of 19.5, which
3 makes particular beneficiaries responsible for covering
4 COFINA's obligations, according to Mr. Schaffer.

5 As I read *Becker*, there was no such provision in the
6 Plan, and the initial distribution of the assets of the bond
7 issuer held by the trustee had already been distributed. And
8 this was a second tranche of collections that, under the Plan,
9 was to go to the bondholders.

10 MR. GLENN: That's correct.

11 THE COURT: So if Mr. Schaffer is right about what
12 19.5 does, as between COFINA and Whitebox, in terms of
13 responsibility, then *Becker* is distinguishable, wouldn't it
14 be?

15 MR. GLENN: Yes, Your Honor, it would be, because
16 there was no Section 19.5 in *Becker* or anything analogous to
17 it.

18 But then that gets back to my original argument, does
19 19.5 create a new obligation? And our position is that it
20 does not. And that's why *Becker* is right on point.

21 There were lots of hurdles for them to come to the
22 conclusion that we have any indemnification obligations under
23 19.5. The obligation, as we've cited in the cases, must be
24 unmistakably clear from the language of promise.

25 The Statute of Frauds applies. There has to be

1 writing against a party who is charged with indemnification
2 obligations. And we cited the *Santa Fe* case from Judge
3 Daniels, where he said, indemnity is also different whereby a
4 court is presented with a dispute. It's really a fee shifting
5 provision, so there's an extra layer.

6 Here it's not really indemnification. It's one party
7 agreeing to pay another party's legal fees up front, in that
8 case, in a dispute between those two parties. And Judge
9 Daniels said that that also must be unmistakably clear from a
10 writing.

11 Let's get to the provisions of the actual bond
12 resolutions that I think are most relevant, which Mr. Schaffer
13 glossed over at a very high level. I think we both agree that
14 804 of the bond resolution is the starting point of the
15 analysis. And there's no dispute that the provision --
16 starting provision of 804, the first provision, indicates that
17 they do have the right, they do have a lien for fees and
18 expenses incurred in and about the performance of their powers
19 and duties under the resolution.

20 That's what we call the compensation provision. And
21 that starts with an intro that COFINA shall, from time to
22 time, pay reasonable compensation.

23 It goes on to say that there's a further agreement to
24 indemnify and hold the trustee harmless for any costs and
25 expenses of the trustee defending itself against any claim,

1 whether asserted by COFINA, the bondholders or any other
2 parties. And that's not secured.

3 I mean, I think we've cited case law to the point of
4 you have to read each provision to make sure it's sensible,
5 that it's not superfluous, and that one provision that's very
6 specific on a particular issue must be given some prominence,
7 some deference beyond the more general provisions.

8 Here it is very clear, and it wouldn't have been
9 necessary to provide that indemnification provision if the
10 compensation provision gave them what they want, or if 1103.1
11 gave them what they want. We wouldn't need the
12 indemnification in Section 804 of the resolution.

13 What they've said in 1103.1 is that these were
14 liabilities incurred in and about the performance of powers
15 and duties under the resolution. But that's not what's in
16 dispute here. These are not -- defending yourself in a
17 litigation is not a power and duty that a contract must confer
18 upon you. You have that right under our American legal
19 system.

20 If we said they didn't have the right to defend
21 themselves in court, that would create another set of
22 problems. So we have to read these provisions together.

23 THE COURT: So what do you do with the other argument
24 that Bank of New York makes, which is to say that they are
25 defending themselves in and about their powers and duties,

1 insofar as the litigation that you've brought is about the
2 exercise of its powers and duties? And so it is litigation
3 that's about that leaving aside whether the power to defend
4 yourself is something inherent in existence or something
5 conferred by a resolution.

6 MR. GLENN: The provision of powers and duties in
7 1103.

8 THE COURT: And it's also in 804.

9 MR. GLENN: And it's in 804.

10 In 804, it's in the section that provides a lien. If
11 that provision means what it says -- I think I went over this
12 already -- the second part of 804 would be superfluous.

13 And then if you go to 1103.1, that's the final
14 waterfall provision, the charging lien provision that they're
15 relying on. And first it says, subject to 804. If that
16 language means what they claim it says, then there's no reason
17 to have that language in the indenture. That would render it
18 a nullity.

19 Second --

20 THE COURT: Is there a meaningful difference in the
21 specific party obligations, insofar as in the second sentence
22 of 804, it's an affirmative indemnification covenant by
23 COFINA, and Bank of New York is saying that 1103 is an
24 intercreditor provision in which the bondholders are
25 specifically agreeing to this application of the waterfall?

1 So that although the function arguably may not be the
2 same, the party signing on to the commitment is added to the
3 universe of whoever would be bound by a hold back from funds
4 held by the trustee under the indenture, as to which a
5 charging lien is granted by the first sentence of 804.

6 MR. GLENN: Again, we have the language in the
7 performance of duties and powers under the resolution. That's
8 a limitation to the waterfall as well.

9 And if you go back to 804, okay, with the dichotomy
10 of COFINA's obligations, which have the lien, and the
11 indemnification that does not, the part that has the lien is
12 in the performance of their duties under the resolution. So
13 any of that's just buttressing the first part of 804 as well.

14 And again, we're relying on the word "duties." Okay?
15 And if they wanted to mirror the obligation for the waterfall
16 for that second part of 804, that language could have been
17 inserted in here as well to make it very clear that that's
18 what they were entitled to get. It does not have that
19 language.

20 The other provision here is that the word "incurred"
21 is in past tense. So if you look at the first part of 1103.1,
22 there's a setup that the part that's necessary to protect the
23 interests of bondholders is a forward-looking obligation,
24 stuff that might happen in the future. You hold back some
25 money to make sure that the bondholders are protected.

1 The second part of 1103.1 is all in the past tense.
2 It speaks of liabilities incurred and advances made, not
3 future liabilities to be incurred to their law firms, to their
4 expert witnesses and the like. So we think that language must
5 be given effect as well.

6 I'll conclude by showing Your Honor that the security
7 agreement in this case is at the end of the resolution. It
8 says very clearly that only principal, interest and other
9 nonindemnification -- not even fee-related matters are covered
10 by the security agreement and the grant to Bank of New York.

11 They cited Section 501 as well. And that's almost a
12 mirror image. But there's no language in 501 that provides
13 them with a grant of the pledged property for this purpose.
14 They are relying on language at the end of there that really
15 does not support what they're saying.

16 So just to recap, we think the *Becker* case is
17 controlling if Your Honor concludes that Section 19.5 doesn't
18 create any new rights.

19 The *Royal Park* line of cases that they cited relates
20 to parties that challenged actions, I think three years in the
21 future in one case before Judge Caproni, where they were
22 already litigating and funding themselves. And the Court
23 stepped in and said, look, this is a matter of judicial
24 economy. Right? Why am I going to deal with this now when I
25 can deal with this later?

1 It's a much different situation here where we're
2 dealing with the finality of a bankruptcy distribution and
3 moving forward in this case based on what the terms of the
4 Plan are.

5 Thank you very much.

6 THE COURT: Thank you.

7 MR. SOLOMON: Good afternoon, Your Honor. Lou
8 Solomon.

9 THE COURT: Good afternoon, Mr. Solomon.

10 MR. SOLOMON: I think my job right now is to offer
11 into evidence the Declarations and documents which we have
12 already provided to the Court.

13 We will begin with the Declaration of Daniel
14 Goldberg, which is at 4767-10 of the ECF numbering. All of
15 these were submitted under motion 4767. So dash ten is his
16 Declaration. Exhibits A, B, C and D are 4767-11, 12, 13, 14.
17 And the Declaration of Robert Fishman is 4767-15.

18 Your Honor has, by Order, directed that those
19 declarations were their direct testimony. And at this point,
20 I would move those in.

21 THE COURT: Any objection?

22 MR. GLENN: No, Your Honor.

23 THE COURT: The Goldberg and Fishman Declarations at
24 4767 with the enumerated Exhibits A, B, C and D to the
25 Goldberg Declaration are admitted.

1 (Whereupon Exhibits A, B, C and D admitted into
2 evidence.)

3 MR. SOLOMON: Thank you, Your Honor.

4 The balance of the documents I wish to offer are all
5 in 4767. And other than 4767-1 which are demonstratives,
6 which we're not offering -- I think we're not going to get to
7 it. And beginning with 4767-2, 3, 4, 5, 6, 7, 8, 9, these are
8 documents either that support some of the legal arguments that
9 Your Honor heard, and it's just easy for Your Honor to have
10 it, or they are documents that either one or the other of the
11 witnesses has relied on.

12 We would offer them at this point.

13 THE COURT: Any objection?

14 MR. GLENN: One moment, Your Honor. No objection.

15 THE COURT: Exhibits 4767-2, 3, 4, 5, 6, 7, 8 and 9
16 are admitted in evidence.

17 (Whereupon Exhibits 4767-2, 3, 4, 5, 6, 7, 8 and 9
18 admitted into evidence.)

19 MR. SOLOMON: Thank you, Your Honor.

20 That is the evidence prior to the cross-examination.
21 I see I have a minute, and just to help move this along more
22 quickly, I'd like to lodge an objection to any
23 cross-examination of these witnesses.

24 Your Honor's Order 4647 directed that we -- that we
25 be told by January 10 at 12 o'clock whether there was going to

1 be any request for cross-examination, including factual issues
2 to which the proposed cross-examination or testimony relates.
3 The subject matter of the testimony and its relevance to the
4 factual issues, that was not filed. Four days later, we did
5 get something that was not in compliance with Your Honor's
6 Order, but it was also not timely.

7 The witnesses are here. If Your Honor has questions,
8 we would love for Your Honor to ask them anything you want,
9 but we do object to the cross-examination. We think it's
10 untimely.

11 THE COURT: Have you flagged this untimeliness
12 objection before to Mr. Glenn or --

13 MR. GLENN: (Shaking head from side to side.)

14 THE COURT: I don't remember seeing this happening in
15 writing, and Mr. Glenn is shaking his head, so I guess --

16 MR. SOLOMON: And I don't think so, Your Honor.

17 THE COURT: Then I'll hear Mr. Glenn's response.
18 Thank you.

19 MR. GLENN: Your Honor, we did not provide the
20 writing that he indicated. We had the time allotted. I
21 didn't understand that we were going to be held to provide
22 cross-examination, an outline of cross-examination in advance,
23 and I apologize for not realizing that.

24 It's unusual, and I didn't realize it existed. So I
25 would like to cross-examine the witnesses.

1 THE COURT: You didn't read the Order that I filed?

2 MR. GLENN: I did not see it, no.

3 THE COURT: You did not comply with the Order, which
4 was specifically designed to give appropriate notice to any
5 party whose witnesses were to be cross-examined, and so the
6 objection is sustained.

7 MR. GLENN: Okay.

8 MR. SOLOMON: Your Honor, considering the fact that
9 there's no cross-examination, we have no redirect and we would
10 rest.

11 THE COURT: And since there is no evidentiary --
12 principal evidentiary proffer, and there is no
13 cross-examination, the Whitebox necessarily rests. Would you
14 agree, Mr. Glenn?

15 MR. GLENN: Yes, Your Honor.

16 THE COURT: All right. And so we will -- and there
17 are no other parties who wish to make statements that I've
18 been made aware of. Oh, Ms. Goldstein.

19 MS. GOLDSTEIN: Thank you, Your Honor, for allowing
20 me to speak. I will be very brief.

21 We do not take a position and we have not
22 participated in the --

23 THE COURT: And you're representing National?

24 MS. GOLDSTEIN: National Public Finance Guarantee
25 Corporation.

1 We do not take a position and we have not
2 participated in this litigation insofar as it is to be a
3 determination as to whether and to what extent there would be
4 a charging lien against Whitebox or any indemnification to be
5 put up against Whitebox. We take no position on the merits of
6 that.

7 However, there's been discussion of a charging lien
8 generally against COFINA cash. To the extent that that is
9 being offered, and I don't believe -- or suggested, we do have
10 a view.

11 We understand that Bank of New York does not take the
12 position that it's -- such alleged charge, or asserted
13 charging lien would impact any holder of COFINA bonds insofar
14 as those bonds are entitled to distributions under the Plan,
15 other than Whitebox.

16 The Ambac matter has been resolved, so I don't need
17 to reference them.

18 So my understanding from Section 19.5 of the Plan,
19 also from BONY's own filings, is that no distribution that is
20 required to be made under the Plan with respect to any other
21 COFINA bondholder will be withheld as a result of, or on
22 account of, the claims. And I'm reading from 19.5.

23 THE COURT: That's what it says literally, yes.

24 MS. GOLDSTEIN: Yes. But there's some lack of
25 consistency when you're talking about a charging lien against

1 COFINA cash. The COFINA cash is what is going to be
2 distributed.

3 I don't think there's an issue with Bank of New York,
4 but I just wanted to make it clear on the record that we are
5 relying on Section 19.5 and, therefore, would expect -- and
6 perhaps Bank of New York's counsel can clarify, because I
7 believe it is their position that there will be no withholding
8 of any other bondholders' distribution, if there is to be a
9 withholding of any distribution.

10 THE COURT: So just before Mr. Schaffer speaks, I
11 want to make sure that I understand the depth or breadth of
12 your position here.

13 Are you saying that your bottom line is you want to
14 be certain that any distribution to which National is entitled
15 will not be debited for any amount that I determine might be
16 properly withheld in order to protect Bank of New York Mellon?
17 You're not so concerned with my reasoning? You're concerned
18 with the bottom line, and you want your hundred percent of
19 your distribution? Is it that?

20 Or are you saying that you take exception to the line
21 of argument that says this isn't a withholding from Whitebox
22 as such; it is a withholding on account of COFINA's obligation
23 from COFINA's cash before it's distributed?

24 But in view of the particular provisions of 19.5, it
25 is to be charged against Whitebox's distribution, which leaves

1 your client in the same cash position, but this line of
2 reasoning that walks through COFINA --

3 MS. GOLDSTEIN: Our only concern is that -- the cash
4 distributions anticipated to go to COFINA bondholders and,
5 therefore, to our client, and those cash distributions will be
6 for the most part distributed to our insureds. We want to
7 make sure that the charging lien could not impact those
8 distributions.

9 What happens with respect to the Whitebox
10 distribution is a matter that's before this Court.

11 THE COURT: Yes.

12 MS. GOLDSTEIN: We take no position on that.

13 THE COURT: Thank you.

14 Mr. Schaffer.

15 MR. SCHAFFER: Your Honor, Eric Schaffer on behalf of
16 the Bank of New York Mellon. I think we are in complete
17 agreement. Section 19.5 sets forth that it is the mechanism
18 for satisfying the obligations of COFINA, and that they shall
19 be satisfied with monies that otherwise would be going to
20 Whitebox and Ambac.

21 And of course with Ambac, we still have the agreement
22 we announced at the beginning. So I don't think there is
23 anything in 19.5 that would provide for monies to come from
24 anyone other than Whitebox in this instance.

25 THE COURT: Thank you.

1 Mr. Rosen.

2 MR. ROSEN: Yes, Your Honor. Thank you. I think I
3 was allocated ten minutes, but I think I'll take one or two.

4 Your Honor, I did participate in a lengthy mediation
5 with Judge Houser, Bank of New York, Ambac and Whitebox with
6 respect to these issue. I'm obviously not getting into what
7 was discussed. 19.5 is the outgrowth of that mediation
8 effort.

9 And I'm happy that Mr. Schaffer stood up and
10 acknowledged the understanding is that no other COFINA
11 creditor -- no other bondholder, excuse me, would be taxed
12 with any obligations other than Ambac and Whitebox, because
13 that was a very, very important provision to the Plan, and it
14 was important for the PSA creditors that they not be in any
15 way taxed with the ongoing litigation that either Ambac or
16 Whitebox would bring.

17 I just want to point to one other thing. I
18 appreciate what Mr. Glenn said at the near outset, which is
19 that they do not oppose the Plan and, in fact, they voted in
20 favor of it.

21 Our concern, Your Honor, is that some of the
22 positions taken by Whitebox in the context of this litigation,
23 however, are tantamount to an objection to the Plan. And if
24 the Court so determines that, Your Honor, that does have
25 severe consequences to a lot parties, especially Whitebox.

1 So we would want, if the Court goes in that
2 direction, to make a reference as to whether or not it
3 constitutes an objection to the Plan or not. Specifically,
4 Your Honor, if I could elaborate, it would be a violation of
5 the Plan Support Agreement.

6 THE COURT: Well, I think -- I'm sorry. I understand
7 the connection there. I'm just not sure that I see that
8 that's a necessary stop on my road to a decision, even if I
9 were to rule in favor of the bank.

10 If I were to say there are these issues that are
11 raised, and even if they might conceivably be construed as an
12 objection, they don't work for whatever other reasons without
13 ruling squarely on whether it's an objection, which you then
14 would say it's a breach of the PSA, since the PSA is not
15 before me for construction.

16 So what are you asking me to do or not to do?

17 MR. ROSEN: Your Honor, we've only been concerned
18 that in light of some of the very well-articulated positions
19 by Whitebox in their papers, they have said that the
20 obligation is COFINA's and COFINA's alone if, in fact, it does
21 exist.

22 And I appreciate that Mr. Schaffer stands up and says
23 if it's COFINA's, I'm still not going to do anything. That's
24 wonderful. And if we get to that point, I don't really care.
25 But if there is a determination that COFINA has the

1 obligation, and it is not in any way limited to just the
2 distributions of Ambac and Whitebox, and it is taxed on other
3 creditors, that in our opinion, Your Honor, would be
4 tantamount to a Plan objection.

5 And in as much as they didn't file a Plan objection,
6 it's certainly in accordance -- by January 2nd, and they voted
7 in favor of the Plan, we think they waived any rights to
8 object. But notwithstanding that, Your Honor, they continue
9 to say that it is COFINA's obligation to pay any costs to Bank
10 of New York Mellon.

11 THE COURT: All right. So here's what I plan to do,
12 and I'm going to reserve decision today because I reserved
13 decision on the Plan, which this is a part.

14 MR. ROSEN: Sure.

15 THE COURT: I'm going to make a decision as to what
16 19.5 and the resolution of other documents that have been
17 cited do, as relates to the rights and obligations of Bank of
18 New York and COFINA, insofar as those could financially
19 implicate Whitebox.

20 I've been asked not to say that as to Ambac, because
21 there is some sort of agreement to which I'm not privy, and
22 that's fine by me. And I hope it stays that way. But, yes,
23 to the appropriate extent, if the other PSA parties decide to
24 take the position that Whitebox has violated the PSA and,
25 therefore, want to deny Whitebox whatever they want to deny

1 Whitebox, if that ripens into litigation, I'm sure I'll be
2 seeing something from you. But until then, I don't see a need
3 to give you a ruling one way or another.

4 Mr. ROSEN: That's fine, Your Honor.

5 May I ask one request of the Court? And I have not
6 discussed this with Mr. Schaffer. I have not discussed it
7 with Mr. Glenn.

8 Whatever determination that you make with respect to
9 this dispute between these parties, could you please include
10 it in a separate Order or decision and not have it be included
11 in whatever is done with respect to the confirmation of the
12 Plan of Adjustment?

13 Because in the event one of them wants to appeal, we
14 do not want it to effect in any way the finality of any Order
15 that you might enter in connection, with respect to the
16 confirmation.

17 THE COURT: Yes. I see that this has been queued up
18 as a separate contested matter, but, in a weird way, not
19 calling itself a motion. But I've conceptually considered it
20 that way, except that I realize I don't have a docket entry to
21 resolve because of the way this has been done.

22 So it would be helpful, and I think consistent with
23 the way that we're proceeding for Bank of New York Mellon, to
24 file a motion requesting an Order resolving this dispute for
25 the reasons that have been developed on the record in these

1 | proceedings. And on the basis of the prior briefs, for
2 | Whitebox to file an affirmation of its opposition to that
3 | request for the reasons that have been proffered on the record
4 | and in the briefs referenced there. And then I can resolve
5 | that motion with an Order that resolves this controversy.

6 | And before I ask you whether that's acceptable to
7 | you, I wanted to find out whether Ms. Tacoronte would still
8 | speak to me if I told you to do that.

9 | Does that work procedurally in this district?

10 | COURTROOM DEPUTY: Your Honor, I could create an
11 | empty motion on the record on behalf of whichever party. It
12 | won't have a PDF attached to it, and it will make reference to
13 | today's hearing, if that's appropriate for Your Honor.

14 | THE COURT: I think that Ms. Tacoronte has suggested
15 | is an even more streamlined approach, which is for her to
16 | create in the system a motion that refers to these proceedings
17 | today, in respect of which I can enter an Order when I make my
18 | decision.

19 | MR. ROSEN: May I suggest one alternative?

20 | THE COURT: Yes.

21 | MR. ROSEN: You already entered an Order in
22 | connection with the establishment of this procedure to get
23 | here today. Could it just be a tag along to that existing
24 | Order?

25 | THE COURT: Well, that request was to establish a

1 procedure, and so I resolved that motion by establishing the
2 procedure.

3 But Ms. Tacoronte, what do you think?

4 COURTROOM DEPUTY: I can link it to whichever filing,
5 existing filing on the record. I just need all the details.
6 So since there is not -- we don't have a PDF attached to it, I
7 will need, you know, filer --

8 THE COURT: I'm going to go back to my original
9 proposal, because then that bookkeeping can be done in one
10 place by the parties.

11 So, Mr. Schaffer, will you file a motion asking me
12 for the determination that under the combination of 19.5 and
13 whatever you're entitled to --

14 MR. SCHAFFER: And Your Honor, may we have until
15 Monday to do that?

16 THE COURT: Yes.

17 MR. SCHAFFER: Thank you.

18 THE COURT: And since Monday is a National holiday,
19 will you, Mr. Glenn, file your formal opposition paper to that
20 by Tuesday?

21 MR. GLENN: Yes, Your Honor.

22 THE COURT: All right. Thank you.

23 MR. ROSEN: Your Honor, thank you very much.

24 THE COURT: Thank you.

25 And so I think that brings us to replies and closing

1 statements.

2 And so Mr. Glenn, you're up first.

3 MR. GLENN: I won't, Your Honor, repeat what I've
4 said on my opening statements. We think that if you parcel
5 the language in our brief, that that's dispositive of the
6 issue and you don't need Mr. Goldberg's testimony or certainly
7 not Mr. Fishman's testimony.

8 Their analysis in their expert reports was based on
9 theoretical assumptions concerning the estimated legal fees to
10 be incurred in these cases. There was no budget provided by
11 the Reed Smith law firm. There was no use of comparable
12 analyses of other cases handled by Bank of New York or Reed
13 Smith. And so we think that it's inappropriate to use those
14 expert reports as a basis to impose any liability on Whitebox.

15 Similarly, there's no allocation --

16 THE COURT: You say imposed liability. You mean if I
17 find that there is an obligation to reserve or make provision
18 for defense costs, those aren't an appropriate basis for
19 quantifying that obligation?

20 MR. GLENN: Correct. Correct.

21 THE COURT: Thank you.

22 MR. GLENN: We understand, and I respect
23 Mr. Goldberg. He's a former partner of my firm. And it's
24 always difficult, as we know, to create litigation budgets
25 prospectively.

1 But there's been a lot of litigation in this case
2 already, a lot of overlap with the interpleader case that was
3 well under way with document discovery. And instead, what
4 Mr. Goldberg did is he created a hypothetical, round-up
5 analysis that was untethered to any work that had been done
6 previously in the case, untethered to whether 40 depositions,
7 which was his assumption what was needed, untethered to the
8 allocation between Whitebox and Ambac litigation.

9 And frankly, we don't know what the Ambac resolution
10 is. So it's hard with no allocation from the Court to figure
11 out how much now Whitebox would have to pay, given the
12 settlement and given the unreliable nature of Mr. Goldberg's
13 approach. But we don't think you need to get there.

14 And we provided Your Honor with, I think, three
15 briefs, where we parse through the language in this case. And
16 I don't think I need to say anything more, other than to refer
17 back to those briefs, which I think parse through the actual
18 words in this resolution as opposed to what the Bank of New
19 York would like them to say.

20 Thank you very much.

21 THE COURT: Thank you.

22 MR. SOLOMON: Thank you. May it please the Court.
23 Lou Solomon.

24 I have only recently been exposed to this, frankly,
25 dazzling display of the administration of justice, the likes

1 of which I've never seen. I do know how to read Your Honor's
2 Order from May 30, 2017. It was the Interpleader Order. And
3 at that time, the claims against the Bank of New York had
4 already been asserted. They have to be changed now because of
5 the releases that had already been asserted.

6 Your Honor was reviewing the same resolution, the
7 same instrument that forms the basis of the legal argument
8 Mr. Schaffer gave. And Your Honor says in paragraph nine,
9 from time to time, BNYM shall be entitled to reserve for or
10 pay its reasonable fees and expenses, whether or not due and
11 owing, from the disputed funds.

12 So that's how Your Honor read the resolution in
13 connection with the Interpleader Order, and it's argued that
14 it hasn't changed, nor should the reading of it change. So
15 the legal issue aside, there's an entitlement to reserve for
16 or pay reasonable fees and expenses.

17 Mr. Schaffer hasn't proven that it is Whitebox who
18 should be making that payment. The question then becomes one
19 of quantum. We showed up. They didn't. We offered Your
20 Honor two experts, both of them highly skilled in their
21 particular areas of expertise.

22 Mr. Goldberg does budgets in complex litigation. He
23 lays it out in extraordinary detail, 30 pages, single spaced,
24 that Your Honor has seen. And then in his exhibit, he goes
25 through tasks that would need to be done, how many hours it

1 will take, what's the blended billing rate for it.

2 Is there speculation in it? There is speculation in
3 it. Whose responsibility is that speculation? It is
4 Whitebox's responsibility. So Whitebox, who was asked by us
5 on November 29, that is Exhibit 4767-9 -- when the mediation
6 failed, you said okay, we're going into this phase of this.
7 Tell us what the claim is. Tell us what your damages are.
8 And they didn't respond.

9 So this is Whitebox, who is -- this is the fellow
10 throwing himself on the mercy of the Court, having killed his
11 parents, claiming he's an orphan. They've created the
12 uncertainty, and now he is complaining that there is
13 speculation.

14 The experts did the best they could, knowing what
15 kind of litigation this is. It was certainly a misstatement
16 when Mr. Glenn said there were no analogies, because having
17 gone through 25 single-spaced pages of telling Your Honor what
18 will need to be done in this case, in three separate places in
19 the Goldberg testimony, in the Goldberg Declaration, he steps
20 back and he says, let me test this against what is reasonable.

21 And he goes through the fees of other firms in this
22 bankruptcy proceeding. He goes through other complex cases.
23 And in the end, he goes through an analogy to another case
24 against a trustee.

25 So that is all in the record before Your Honor. And

1 in that regard, the range that he comes up with between 25 and
2 40 million dollars is on -- as he said, on the lower end of
3 the range.

4 Mr. Glenn had said, well, you know, a lot of work had
5 already been done in the interpleader action. He asked the
6 witness that in his deposition. But very little work had been
7 done in the interpleader action, because Your Honor had stayed
8 that portion of the interpleader action.

9 And in one of the Orders that was an exhibit we have
10 that we offered Your Honor today, it shows that stage three
11 was the claim that Mr. Glenn says they had been litigating.
12 And this case has not gotten to stage three. That was already
13 stayed.

14 And so nothing, very little had been done. But even
15 so, Mr. Goldberg explains in his testimony to Your Honor, and
16 he took into account, minimally, but still took into account,
17 savings that might be incurred because of the earlier claims
18 that had been asserted. Those earlier claims are going to
19 wash away.

20 There's not a fraud claim earlier. There is a fraud
21 claim that they say they're going to bring now. And when you
22 sue the Bank of New York for fraud and for willful misconduct,
23 guess what? It is going to defend itself. And the first sort
24 of act contrary to public policy is the notion that Whitebox
25 here can actually tell the Bank of New York how much it can

1 spend to defend itself.

2 Mr. Glenn talked about the American legal system.
3 That ain't the American legal system. So we brought you two
4 experts: One, Mr. Goldberg; one, Mr. Fishman. And
5 Mr. Fishman addresses it from the context of a fee examiner,
6 like assuming what Mr. Goldberg said.

7 Now, is it reasonable in the context that he has
8 experienced. And he tells Your Honor, yes. No
9 cross-examination. No other experts. No other evidence.

10 The range that they found reasonable, between 25 and
11 40 million dollars, there's no allocation that should arise
12 because of that, because what the witnesses were telling the
13 Court is how much do his claims cost to defend.

14 Whitebox doesn't get a buy or a reduction or setoff
15 because Ambac was reasonable and they resolved this through
16 the efforts of Judge Houser. That Whitebox is the dog in the
17 manger, that Whitebox is the holdout, is not a reason to
18 reward it. It's a reason to draw inferences against it.

19 The midway point between 25 and 40 million dollars is
20 32.5. Your Honor should ask and direct and set aside 32.5
21 million dollars be paid by Whitebox. Your Honor has the
22 protections that each of our witnesses has talked about, and
23 that is, if the money is not used, obviously the Bank of New
24 York will repay it.

25 Second, there is a challenge of reasonableness at the

1 end of the day. If they want to claim that the Reed Smith
2 firm or whoever's going to do the case was not reasonable,
3 they are not losing their opportunity to argue that. And if
4 they can prove that the Bank of New York acted fraudulently,
5 and one has to suspend his belief in this part of the
6 proceedings -- Judge, I think it's a groundless claim. But
7 that's not what we're here for.

8 If they can prove that there was gross negligence or
9 willful misconduct, then they have a right to come to court
10 and say that the Bank of New York should turn it all back.
11 Those are protections that we have agreed, the Bank of New
12 York Mellon has agreed should go into the holdback. And with
13 that, I will stop.

14 Thank you.

15 THE COURT: Thank you, Mr. Solomon.

16 Thank you, Counsel, for these arguments and for your
17 submissions. I am taking this matter under submission.

18 I will look forward to the procedural motions that
19 will give me something to hang an Order on. And you will be
20 notified when I've reached a decision.

21 Ms. Uhland.

22 MS. UHLAND: Good afternoon, Your Honor. Suzanne
23 Uhland for AAFAF, representing AAFAF here today for O'Melveny
24 Myers.

25 If now is a good time, I had a quick question about

1 the supplemental briefing. I just wanted to make sure.

2 THE COURT: Yes.

3 MS. UHLAND: I understand the additional briefing
4 with respect to the legislation, but the Court also said that
5 explanation -- I think you said of the legal basis of the
6 independent corporation?

7 THE COURT: Well, I left 170 back in my office, but I
8 think the first item in 170 is that new COFINA is an
9 independent public corporation entirely separate and validly
10 established, and some legal anchors in Puerto Rico law for
11 those propositions would be helpful.

12 MS. UHLAND: All right. Thank you, Your Honor. That
13 clarifies it.

14 THE COURT: And if there's anything yet similar in
15 there that is a -- because I don't remember the whole list.

16 MS. UHLAND: But it's paragraph 170?

17 THE COURT: Paragraph 170.

18 MS. UHLAND: Thank you, Your Honor.

19 THE COURT: It deals with the status of entities and
20 the nature of the entities.

21 MS. UHLAND: Thank you.

22 THE COURT: All right. Anything else, Mr. Rosen?

23 MR. ROSEN: No.

24 THE COURT: He says no.

25 Once again, thank you, advocates; thank you, Judge

1 Houser; and thank you also to Judges Ambro and Atlas and the
2 other members of your team. And I trust that you will convey
3 those thanks.

4 Keep well. Safe travels, everyone. And I will see
5 you in New York in two weeks I think. I haven't had any
6 objections to New York.

7 And I'm sorry. Once again, thank you so very much to
8 the Court staff here and in New York for smooth administration
9 of these proceedings and their gracious and hard service.
10 Thank you.

11 (At 3:44 PM, proceedings reconvened.)

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1 U.S. DISTRICT COURT)
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 185 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge Laura Taylor Swain on January 17,
8 2019.

9

10

11 S/ Amy Walker

12 Amy Walker, CSR 3799

13 Official Court Reporter

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